(19,009.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 358.

PABST BREWING COMPANY, APPELLANT,

vs.

G. Y. CRENSHAW AND JOHN J. DOWNEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Original bill of complaint	1	1
Subpœna for John J. Downey, with officer's return thereon	14	13
Subpœna for G. Y. Crenshaw, with officer's return thereon	15	14
Defendant's demurrer to bill	16	16
Complainant's petition for order to file amended bill	18	18
Order allowing prayer of petition	18	18
Amended bill	18	18
Order overruling demurrer	38	36
Opinion of the court	39	36
Joint and several answer of defendants	56	50
Plaintiff's replication	64	57
Agreed statement of facts	65	58
Decree	76	67
Assignment of errors	87	76
Petition for allowance of appeal	88	77
Order allowing appeal	88	77
Bond for appeal	90	78
Citation	91	79
Acceptance of service thereon	92	79
Certificate of clerk to transcript	93	79

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 26, 1904.

1 In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

Be it remembered that there was filed in the office of the clerk of the circuit court of the United States for the St. Joseph division of the western district of Missouri, on the 20th day of November A. D., 1901, a bill of complaint in the following case, to-wit:

THE PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW, Inspector of Beer and Malt Liquors for the State of Missouri, and JOHN J. DOWNEY, Deputy Inspector of Beer and Malt Liquors for the State of Missouri, Defendants. } In Equity.

To the honorable the judges of the circuit court of the United States for the St. Joseph division of the western district of Missouri:

Your orator, The Pabst Brewing Company, a corporation under and by virtue of the laws of the State of Wisconsin, and having its principal place of business in Milwaukee in the State of Wisconsin, and a citizen and resident of the State of Wisconsin, the above named complainant brings this bill for and in behalf of itself and all others similarly situated, against G. Y. Crenshaw, inspector of beer and malt liquors in and for the State of Missouri, a citizen and resident of the State of Missouri, residing in the city of St. Louis, in the eastern judicial district of Missouri, and John J. Downey, deputy inspector of beer and malt liquors in and for the State of Missouri, a citizen and resident of the State of Missouri and residing at St. Joseph, within the said Saint Joseph division of said western district; and thereupon your orator complains and says:

First. Your orator states that it now is and at all times hereinafter mentioned, was, a corporation duly organized, existing and operating under and by virtue of the laws of the State of Wisconsin, and that it now is and at all times hereinafter mentioned, was, engaged in the business of manufacturing and selling beer in
2 the State of Wisconsin, and also in the business of importing into and selling in the State of Missouri, beer manufactured by it as heretofore stated; that it annually imports into and sells in the State of Missouri not less than fifteen thousand barrels of beer of thirty-one gallons each.

Second. Your orator further states, that the defendant, G. Y. Crenshaw has recently been appointed by the governor of the State of Missouri as beer inspector under and by virtue of an act of the General Assembly entitled: "An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection

of beer and malt liquors manufactured and sold in this State," approved May 4th, 1899; which said act is in words and figures as follows:

"An act creating the office of inspector of beer and malt liquors of "the State, and providing for the inspection of beer and malt "liquors manufactured and sold in this State.

"Be it enacted by the General Assembly of the State of Missouri, "as follows:

"SECTION 1. There is hereby created the office of beer inspector "which shall be filled by appointment by the governor by and with "the consent of the senate, within thirty days after the taking effect "of this act, an inspector of beer and malt products, who shall serve "for a term of four years and until his successor is duly appointed "and qualified. He shall be an expert beer brewer, and a citizen "of the United States and of this State for more than two years next "prior to his appointment. He shall give a bond in the sum of "twenty-five thousand dollars, to be approved by the governor, for "the faithful performance of the duties of his office.

"SECTION 2. Said inspector shall, with the approval of the gov-"ernor appoint such deputies as may be required to carry out the "provisions of this act, not to exceed four in number, and such cleri-"cal help as may be necessary. Said deputies shall each receive for "their services the sum of fifteen hundred dollars per annum, and "said inspector shall receive the sum of three thousand dollars per "annum, all salaries and expenses to be paid out of the sums of "money now, or that may hereafter be, appropriated for said pur-"pose.

"SECTION 3. Every person, persons or corporation who shall erect "or keep a brewery for the manufacture or brewing of beer or other "malt products within this State, for the purpose of offering the same "for sale, shall cause the same to be inspected by the said State in-"spector.

"SECTION 4. No person, persons or corporation, engaged in the "brewing or manufacture of beer or other malt liquors, shall use "any substance, material or chemical in the manufacture or brew-"ing of beer or other malt liquors, other than pure hops or pure "extract of hops, or of pure barley, malt or wholesome yeast, or "rice.

"SECTION 5. Every person, persons or corporation who shall re-"ceive for sale or offer for sale any beer or other malt liquors other "than those manufactured in this State shall, upon receipt of same, "and before offering for sale, notify the inspector, who shall be fur-"nished with a sworn affidavit, subscribed by an officer authorized "to administer oaths, from the manufacturer thereof, or other repu-"table person having actual knowledge of the composition of said "beer or other malt liquors, that no material other than pure hops or "the extract of hops, or pure barley, malt or wholesome yeast, or rice,

"was used in the manufacture of same; upon the receipt of said "affidavit, the inspector shall inspect and label the packages con- "taining said beer or malt liquors, for which services he shall receive "like fees as those imposed upon the manufacturers of beer and "malt liquors in this State.

3 "SECTION 6. The inspector appointed under this act shall "provide himself with an office, and shall record on books "kept for that purpose the names and places of business of all persons "engaged in the manufacture, brewing and sale of beer and malt "liquors. He shall keep a record of all beer or malt liquor manu- "factured, brewed or sold and the amount produced by each brewery "or manufacturer, or sold by dealer. He shall keep a record of all "fees collected and all expenditures incurred, and shall make a "full and complete report of the same to the governor upon the first "day of each year.

"SECTION 7. It shall be the duty of such inspector to cause to be "inspected all beer or other malt liquors brewed or manufactured "or sold in this State, and if he shall find that such beer or other "malt liquors has been made from pure hops or the pure extract of "hops, or of pure barley, malt or wholesome yeast, or rice, to place "upon the packages containing such beer or malt liquor his label, "certifying that the same has been inspected and made from whole- "some ingredients.

"SECTION 7*a*. It shall be the duty of the State treasurer upon the "taking effect of this act to provide suitable and inimitable State "certificates and labels for this inspection gauging and labeling, "having on each, proper places for countersigning by the State "treasurer and inspector, and shall safely keep the same together "with the plates used in making them, when not in actual use. "The State treasurer shall from time to time, upon demand, deliver "the aforesaid labels to the inspector, taking therefor his receipt and "shall charge said inspector with the same; and shall from time to time "as said inspector makes returns of moneys collected in the course "of his inspection credit said inspector's account with such sums "and shall keep a true and correct book account of his dealings "with said inspector.

"SECTION 7*b*. It shall be unlawful for any person to attempt to "make or make, to attempt to sell or sell, to attempt — use or use "any of the certificates or labels or both provided for by this act, or "imitation thereof, except such persons as by law are allowed to "make, sell and use the same, and any person so offending shall be "deemed guilty of a felony and, upon conviction, be punished by "imprisonment in the penitentiary for a term not to exceed five "years.

"SECTION 8. The inspector shall be entitled to receive for inspect- "ing and gauging one cent for each gallon contained in each pack- "age, and two cents for labeling each package. All fees received "by the inspector shall be paid into the State treasury. The word "package as used in this act shall be construed to mean any vessel

"of any kind other than pint and quart bottles in which any beer "or malt liquor may be placed for sale, containing eight gallons or "less; when said beer or malt liquors are placed in pint or quart "bottles, a package as used in this act, shall be construed to mean "not to exceed 48 pint bottles or 24 quart bottles of beer or malt "liquors, which, when manufactured and so bottled must, before "sale be placed in suitable cases containing said number and size "of bottles, for inspection and stamping by said State inspectors; "and when said beer or malt liquors shall be placed in vessels con- "taining more than eight gallons, the word package shall be con- "strued to mean each eight gallons or fractional part thereof so "contained in said vessel.

"SECTION 9. The expense of said office including the salaries of "the inspector and his deputies, shall be paid monthly out of the "amount appropriated by law from *from* the general revenue fund "on warrants drawn by the State auditor on vouchers approved by "the inspector, and all fees received by the inspector under the pro- "visions of this act shall on or before the last day of each month, be "paid into the State treasury by said inspector, and shall be placed "to the credit of the general revenue fund.

"SECTION 10. Any person who shall sell any beer or malt liquor "within this State which has not been inspected according to the "provisions of this act, or contained in packages which shall not "have upon them the certificate of the State inspector, or any person "— shall fail to destroy said certificate or label after the contents "of said package are disposed of, shall be deemed guilty of a misde- "meanor, and upon conviction thereof, shall be punished by a fine "not exceeding five hundred dollars, or by imprisonment in the "county jail for a period of not less than six months, and in addi- "tion thereto shall have his license or other authority, giving him "the right to manufacture or sell said liquors in this State, revoked, "and shall not again receive any such license or other authority for "a period of two years thereafter.

"SECTION 11. If any inspector shall fail to perform any of
4 "the duties imposed upon him by this act, or shall in any "manner violate the provisions thereof, he shall be deemed "guilty of a misdemeanor, and upon conviction thereof, shall be "punished by imprisonment in the county jail for not less than "thirty days and a fine not exceeding one thousand dollars, and if "any such inspector shall fail to faithfully performed the duties en- "joined upon him by this act he may be removed from office by the "governor.

"SECTION 12. All prosecutions for fines and penalties under the "provisions of this act shall be either by indictment od informa- "tion in any court of competent jurisdiction, and when collected "shall be paid one-fourth to the informer and three-fourth- into the "fund for the construction of public roads and highways in the "county in which said offence may have been committed and prose- "cution begun.

"SECTION 13. All beer or other malt liquors manufactured in "this State and exported outside of this State for sale, shall be in- "spected as other liquors designated in this act, but said inspection "shall be free of cost to the manufacturer.

"SECTION 13*a*. Every railroad, express or transportation company, "shall when requested, furnish to the inspector a duplicate bill of "lading or receipt, showing the name of the consignor and consignee, "date, place received, destination and quality of beer or malt liquors "received by them for shipment to any point within this State. "Upon failure to comply with the provisions herein, said railroad, "express or transportation company shall forfeit or pay to the State "of Missouri the sum of fifty dollars for each and every failure to be "recovered in any court of competent jurisdiction. The inspector "herein provided for, is hereby authorized and impowered to sue in "his own name at the relation and to the use of the State. The "penalties collected shall be paid into the State treasury.

"SECTION 14. There is hereby appropriated out of the State treas- "ury, charg-able to the general revenue fund, for the year 1899 and "1900, for the payment of the inspector, six thousand dollars; for "the pay of four deputies, twelve thousand dollars; for rent, station- "ery, fuel, printing and such other things as may be necessary for "the transaction of the business of said inspector, the sum of six "thousand dollars.

"Approved May 4, 1899."

Third. Your orator further states that the said defendant, G. Y. Crenshaw has duly qualified under the terms of said act of the General Assembly and that the defendant John J. Downey has by the said G. Y. Crenshaw, with the approval of the governor of the State of Missouri, been appointed deputy inspector of beer and malt liquors of the State of Missouri, and has duly qualified as such deputy inspector and that said defendants claim to be entitled to act as such beer inspector and deputy beer inspector, and entitled to discharge the duties of said respective offices, and claim to be entitled to enforce and carry out the provisions of said act of the General Assembly, and to that end have publicly stated and announced their intention of enforcing the provisions of said act.

Fourth. Your orator further states that there are persons, firms and corporations engaged in the manufacture and sale of beer in the State of Missouri, as follows: The American Brewing Company, the Anheuser-Busch Brewing Association, the Columbia Brewing Company, the Consumers Brewing Company, the Home Brewing Company, the National Brewing Company, Louis Ebert, the St. Louis Brewing Association, and the Wm. J. Lemp Brewing Com-
5 pany, the Ferdinand Heim Brewing Company, Rochester Brewing Company, G. Muehlbach Brewing Company, Jacob Moerschel, Charles Schibi, the Ste. Genevieve Brewing & Lighting Association, the M. K. Goetz Brewing Company, John Jester, the St. Joseph Brewing Company, the Moerschel Brewing Company, the

Springfield Brewing Company, John B. Busch, the Weston Brewing Company, the Cape Brewing & Ice Company, Herl-Redlin Brewing Company, Elizabeth Reidel, Hugo Kropp, the Capital Brewing Company and Casper Ludwig.

That the persons, firms and corporations last hereinbefore named manufacture annually not less than 2.250.000 barrels of beer of 31 gallons each; of which amount they sell in the State of Missouri not less than 1.275.000 barrels of 31 gallons each, and outside of the State of Missouri not less than 975.000 barrels of 31 gallons each. That of the persons, firms and corporations last hereinbefore named twelve sell their entire product in the State of Missouri; and that a majority of the remainder sell the largest portion of their product in the State of Missouri; but that one of the said parties sells more than two-thirds of its product and another of said parties sells about four-fifths of its product outside of the State of Missouri; and that a third of said parties sells more than one-half of its product outside of the State of Missouri; that with the exception of the three companies last referred to, all the brewers manufacturing in the State of Missouri sell either all or the greater portion of the product in the State of Missouri.

That in addition to the plaintiff herein, and the persons, firms and corporations hereinbefore mentioned as manufacturing and selling beer in the State of Missouri, there are persons, firms and corporations engaged in manufacturing beer in other States, and particularly in the States of Illinois and Wisconsin, who annually ship into and sell in the State of Missouri not less than one hundred and sixty-five thousand barrels of 31 gallons each. That in addition there are large quantities of ale imported from other States in the Union.

That in addition to the foregoing there is imported into the State of Missouri by various persons, firms and corporations engaged in the sale of beer, large quantities of beer from foreign countries, and especially beer from Germany and ale from England, and that the aggregate of beer and ale imported from other States of the Union and sold in this State, amounts in the aggregate to an annual importation and sale of about 1500 barrels of 31 gallons each.

That there are engaged in the manufacture of beer known
6 as "weiss bier" the following firms, persons and corporations:—

At St. Louis in the State of Missouri;—

The St. Louis Weiss Bier Brewing Company, Schrader-Berlina Valena Company, Strecher & Thomas, Witteman-Rost Brewing Company, American Weiss Biel Company, Berliner Imported Weiss Bier Company, and Columbia Weiss Bier Company.

At Kansas City, Missouri:—

W. L. Schnick, P. Seltzer & Sons, Bremer & Thoma.

That about 5200 barrels of weiss bier are sold in the State of Missouri annually, of which about 4000 barrels are sold in Missouri and 1200 barrels are exported.

Fifth. Your orator further states that weiss bier is a malted and

fermented liquor brewed from wheat and has always been so brewed and cannot be made from any other cereal. That lager beer is made commonly of hops and malted barley and of barley, rye, corn and other farinaceous cereal which it may be convenient for the brewer to use, and it may be properly made of any farinaceous cereal used in conjunction with hops and malt in the production of lager beer, and such cereals when so used, are entirely wholesome. That beer, whether weiss bier or lager beer, and whatever cereals may be used in its manufacture, must for the purpose of sale, be enclosed in tight packages of glass or of wood, and when so prepared for sale by enclosure in such tight packages, the packages cannot be opened without injury to the contents and are never opened except for the purpose of immediate consumption; that to open the same prior to the consumption thereof is to render the beer stale, flat, unpalitable and sour. Your orator further states that the said act of May 4th, 1899, prohibits the use of wholesome articles in the manufacture of beer, such as corn and wheat, notwithstanding that these articles have for many years been used in the manufacture of beer and are recognized and admitted to be wholesome; and your orator states that the average price of beer manufactured and sold in the State of Missouri, exclusive of the United States revenue stamps is five dollars ($5.00) per barrel of 31 gallons.

Sixth. Your orator further states that the said act of May 4th, 1899, contained a revenue measure in this, that the said inspection fee authorized by the said act to be charged on account of the inspection of beer and malt liquors is in effect a tax. That the entire expense of the inspection, as provided by the act itself, amounts to twelve thousand dollars ($12.000) a year, while the inspection
7 fees of the beer annually sold in the State of Missouri as hereinbefore set forth amount to not less than five hundred and fifty thousand dollars ($550.000) an excess of more — five hundred thousand dollars ($500.000) above the cost of inspection, which excess of five hundred thousand dollars is, by the terms of the act and by its necessary operation and effect, a specific tax upon beer sold in the State of Missouri and is levied for the purpose and is required by the act to be turned into the general revenues of the State for the uses of such general revenue; and your orator further states that said bill, as introduced into the senate of the State of Missouri, was recognize by its framer to be a revenue bill and was entitled, when the same was introduced, "An act creating the office of inspector of beer and malt liquors and providing for an increase in the general revenue of the State," and that the said bill was treated throughout as a revenue measure and was supported as such by those who defended and voted for it in the senate and in the house of representatives of the Missouri General Assembly.

That the taxes imposed under and by virtue of the said act *is* in addition to the tax already paid by your orator and persons similarly situated on the product sold in the State of Missouri, and that the said — is imposed solely upon the manufacturers and vendors of

beer and not upon the manufacturers and vendors of other products of consumption.

Seventh. Your orator further states that it is advised and does believe and so charges, that the said act of the General Assembly, of May 4th, 1899, hereinbefore fully set out, is unconstitutional, inoperative and void, and that it is against the common rights and of no binding force, validity or effect so far as your orator and all others similarly situated are concerned, for the following reasons, to wit:

1st. Because the said act of May 4th, 1899, is violative of section one of the fourteenth article of amendment to the Constitution of the United States, which provides that "No State shall make or enforce any law which shall abridge the privilege- or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and also violative of section two of article four of said Constitution of the United States, which provides that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. Your orator states that said act of May 4th, 1899, violates said provisions of the Constitution of the United States in this, that said act provides that no person or corpora-

8 tion engaged in brewing or the manufacture of beer or other malt liquors shall use any substance or material in the manufacture or brewing of beer or other malt liquors, other than those mentioned in section four of said act, and thereby imposes an unreasonable and unconstitutional restraint upon a lawful occupation and upon an occupation which your orator has been expressly authorized to engage in and which every citizen of the United States has a right to engage in. Your orator represents that there are wholesome or harmless ingredients other than those specified in said section four which may be properly used in the manufacture of beer and that corn, wheat, rye and other farinaceous cereals, which have for many years been used in the manufacture of beer, and which are prohibited by the said act in the manufacture of beer, are wholesome and are properly used in the manufacture of beer and other malt liquors and that weiss bier cannot be made at all without the use of wheat. Your orator further states that the said act of May 4th, 1899, is an unwarranted, arbitrary and oppressive exercise of Government interference in a lawful occupation of a portion of the citizens of the United States and that the limitations and restrictions contained in said act are in violation of the rights secured to the people of the United States by the provisions of the Federal Constitution above referred to, and are also against common rights, independent of any constitutional provision.

Your orator further states that the said act of May 4th, 1899, violates the above provisions of said fourteenth amendment to the Constitution of the United States in this, that said act arbitrarily selects the finished product of the manufacturer of beer and malt

liquors and imposed upon such product a tax *over* and greater than is imposed upon the finished product of any other manufacturer in the State of Missouri, or upon the property of any other person or class of persons in the State, that by reason of said arbitrary, unjust and unreasonable discrimination and class legislation, said act denies the manufacturers of beer and malt liquors equality before the law and deprives them of the protection of equal laws to which they are entitled. Your orator further states that the said act violates the above provisions of the said fourteenth amendment to the Constitution of the United States, in this, that it requires your orator and other manufacturers of beer, not resident in the State of Missouri, but importing into the State for sale therein its finished product, to pay a tax on said product other and greater than is imposed upon the finished product of any other manufacturers not resident in the State of Missouri, but who import into and
9 sell in the State of Missouri their finished product.

Your orator further states that said act discriminates between the manufacturers of beer and malt liquors resident in the State of Missouri, in this, that the brewer who manufactures for sale within the State of Missouri is taxed thirty-nine cents (39c.) per barrel upon the product sold in the State, whilst the brewer who exports his product from the State is exempt from such taxation.

Your orator further states that the said act of May 4th, 1899, violates the provisions of the fourteenth amendment to the Constitution of the United States in this, that said act declares that any violation of the same, shall be a misdemeanor, and then provides further that such misdemeanor shall be punished by fine or imprisonment, or both, and in addition thereto the offender shall have his license or other authority, giving him the right to manufacture or sell beer or malt liquors in the State, revoked, and shall not again receive any such license or other authority for a period of two years thereafter; that the punishment for a violation of said act, as fixed in the act, is cruel and unusual, inasmuch as it provides for a different kind of punishment for the particular misdemeanor created and defined by the act from the punishment which is usual and customary punishment in the State of Missouri for misdemeanors, namely, fine and imprisonment, or both; that is to say, a misdemeanor when committed by a brewer shall be punished in a manner different in kind than is proscribed for the punishment of others guilty of misdemeanors.

Eighth. Your orator further states that the said act of May 4th, 1899, is repugnant to the provisions of the Constitution of the United States concerning the regulation of inter-state commerce, being section eight of article one of said Constitution, as well as section two of article four of said Constitution, declaring that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States, and to the second clause of section ten of article one of said Constitution, which provides that no State shall, without the consent of Congress, lay any imposts or duties upon im-

ports or exports except what shall be absolutely necessary for executing its inspection laws, and is also repugnant to section one, of the fourteenth amendment to the Constitution of the United States, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of any citizens of the United States, nor shall any State deprive any person of life, liberty of property without due process of law or deny to any person within its jurisdiction the equal protection of the law." Your orator states that the said act of May 4th, 1899, violates the above provisions of the Constitution of the United States in this, that it requires all beer and malt liquors imported into the State of Missouri from other States and Territories or foreign countries, while still in the original packages and before being offered for sale, to be inspected and labeled and said tax of one cent per gallon and two cents per package thereon be paid, and also to be accompanied by an affidavit from the manufacturer or other reputable person having actual knowledge thereof, that no material- other than specified in said act were used in the manufacture of said beer or malt liquor, and also that the person or corporation receiving beer or malt liquors for sale from other States and Territories or foreign countries shall, before offering the same for sale, submit the same for inspection as aforesaid and procure from said inspector a certificate that such beer or malt liquor has been made exclusively of the ingredients specified in said act; all of which your orator states is in violation of the provisions of the Constitution of the United States hereinbefore set forth.

Your orator further states, that it is engaged in the manufacture of beer in the State of Wisconsin and in the sale of its manufactured product in the States of Wisconsin and Missouri and other States of the Union; that its principal place of business is situated in the city of Milwaukee in the State of Wisconsin; that for many years last past it has owned and managed and still owns and manages in the city of Kansas City, Missouri, a depot or agency in which, during all of said time, it has been continuously storing and depositing the product of its manufactory. That in due and ordinary course of its business at frequent intervals it ships from its manufactory aforesaid, to its depot in the city of Kansas City, aforesaid, beer in barrels, kegs and bottles, which are placed and kept in its said depot until the same are removed therefrom and delivered to its customers in the State of Missouri and elsewhere. That it has no brewery or plant or manufactory for the brewing or manufacture of beer or other malt liquors in the State of Missouri; that its business as conducted and maintained in the State of Missouri, consists solely on its maintaining the depot in which it stores the product of its brewery, and in due course of its business it removes it from said depot and delivers it in original packages to its customers; that none of the product sold by your orator is manufactured or brewed in the State of Missouri, but that all its product which is stored or handled in the State of Missouri is manufactured in the State of Wisconsin, and is there put into

barrels, kegs and bottles, and when thus put up it is shipped
11 to and stored in its depot in the city of Kansas City,
as originally put up and the same is thereafter removed therefrom and delivered to its customers in the same original packages; that in order for it to transport its product from the State of Wisconsin to the city of Kansas City and introduce the same in the State of Missouri, it is necessary to have in said State a depot or agency in which to store its product so shipped so that it may be thereafter removed therefrom and delivered to its customers; that its depot or agency is used as a place of storage and for no other purpose whatever, and in transporting its product from the State of Wisconsin to the State of Missouri and introducing the same therein, in order to preserve its said product fit and proper for consumption, it is necessary for it to have such depot or agency in which to keep said product. That it has for many years past conducted its business as aforesaid and it desires and intends to so conduct its business in the future.

That the purpose of its said depot and agency in said Kansas City, Missouri, it owns and maintains large ware houses and storage houses especially constructed for its said business, and which would be of little or no value for any other business, all of great value, to wit of the value of $50,000.00; and owns and uses a large number of horses and wagons and other property of great value to wit; of the value of $100,000.00; and has built up and enjoys a large and well established trade and business from its said depot and agency in Kansas City, Missouri, which yields it a large revenue and profit, to wit; annual profits to the amount of $20,000.

And your orator states that unless the relief herein prayed for is granted, your orator's said property will be rendered wholly worthless and of no value, and its said business will be wholly destroyed and its income and profits lost to it.

Your orator states that the act providing for the inspection fees, are further a violation of the provisions of the Constitution above set forth in this, to wit: that all the beer stored in the depot or agency belonging to your orator is imported from another State, as aforesaid, to wit; the State of Wisconsin, in original packages, and that while the State has the right to enact a police regulation in reference to the beer so imported, it has no right to impose an inspection fee which shall go into the revenues of the State and thereby become a revenue regulation, under the guise of enforcing the police powers of the State, tax the finished product of your
orator thus imported from the State of Wisconsin into the
12 State of Missouri for general revenue purposes and that said
act is purely a revenue bill and not a police regulation, and that the power to levy taxes for revenue purposes is distinct from the police power.

The defendants pretending to act as beer inspector and deputy beer inspector respectively, have instituted and caused to be instituted in the State of Missouri a large number of criminal prosecu-

tions to wit: about nine thousand criminal prosecutions for alleged violation of said act, and have threatened, and are about to, unless the relief herein prayed for be granted, and will, institute prosecutions against your orator and its customers in the State of Missouri, and other persons, firms and corporations similarly situated, all of which will produce irreparable injury and damage unto your orator and others similarly situated and for which it will have no adequate remedy at law.

Your orator further states that the enforcement of said act of the General Assembly of May 4th 1899, would, for reasons hereinabove stated, cause irreparable damage to the business of your orator and all other persons similarly situated in the State of Missouri. That the number of persons engaged in the brewing and sale of malt liquors, and who are affected by the terms of said act, is large, and that this action is brought by your orator for itself and on behalf of all persons similarly situated, in order to avoid a multiplicity of suits and to prevent irreparable damage to the property and business of each of them.

Your orator further shows that besides the irreparable damage which will be inflicted upon its property and business by the inspection of beer as hereinbefore more fully set out, the act in question provides for heavy fines and penalties and imprisonment of all brewers who fail to conform to its provisions and who sell their product without submitting the same to such inspection and who fail to pay the unconstitutional tax imposed by said act, and said act provides that a prosecution and conviction for failure to comply with the terms of said act and of the payment of the tax shall be followed by the forfeiture of the brewer's right to manufacture and sell beer and other malt liquors in the State for a period of two years thereafter, which would cause ruinous damage to plaintiff's business and that of others similarly situated, in which large capital is invested, and in which many thousand persons are employed.

13 Your orator further states that by reason of the facts hereinbefore set out, it is without adequate remedy at law, and that it now comes into a court of equity and prays for relief under the facts and circumstances herein stated, and your orator further states that unless the relief hereinafter prayed for is granted the damage to your orator and all others similarly situated will be irreparable and a multiplicity of suits will result.

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said defendant may answer the premises but not upon oath or affirmance, the benefit whereof is expressly waived by your orator, it now prays the court that an order of injunction may issue out of this court directed to the defendant, the said G. Y. Crenshaw, claiming to be the inspector of beer and other malt liquors in the State of Missouri, and to the defendant John J. Downey claiming to be the deputy inspector of beer and other malt liquors in the State of Missouri, enjoining and restraining them, their deputies, agents and servants, and each of

them, from enforcing or attempting to enforce said act of the General Assembly of May 4th, 1899, and from inspecting or attempting to inspect the beer or other malt liquors manufactured or offered for sale by your orator or others similarly situated, and from collecting or attempting to collect any tax or inspection fee under said act and from attempting to enforce said act as against any customer of your orator and others similarly situated, and your orator further prays that the said act of the General Assembly of the State of Missouri, be declared null and void, and for such other and further relief in the premises as the nature of the circumstances of the case may require, and may it please your honors to grant to your orator a writ of subpœna, to be directed to the said G. Y. Crenshaw and John J. Downey, thereby commanding them at a certain time and under a certain penalty therein to be named, personally to appear before this honorable court, and then and there *offer* true, direct and perfect answer to make to all and singular the premises, and to stand —, perform and abide by such order, direction and decree as may be made against them in the premises, as shall — meet and agreeable to equity. And your orator will ever pray.

HARKLESS, O'GRADY & CRYSLER,
Att'ys for Complainant.

On said bill of complaint subpœnas were issued as prayed for, in words and figures to-wit:—

14 *Subpœna.*

(Original.)

ST. JOSEPH DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

The President of the United States to G. Y. Crenshaw, inspector of beer and malt liquors for the State of Missouri, and John J. Downey, deputy inspector of beer and malt liquors for the State of Missouri, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States, for the St. Joseph division of the western district of Missouri, on the first Monday of January next, at the city of St. Joseph, then and there to answer the bill of complaint of the Pabst Brewing Company, a corporation, citizen of the State of Wisconsin, filed against you on the 20th day of November 1901. Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 20th day of November A. D. 1901.

[L. S.] Issued at office in the city of St. Joseph Mo., under the seal of said circuit court, the day and year last aforesaid.

CALVIN C. COLT, *Clerk.*

MEM.—The defendant- to enter — appearance in this suit in the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*.

CALVIN C. COLT, *Clerk*.

[Endorsed:] No. 235 United States circuit court western district of Missouri, St. Joseph division The Pabst Brewing Company vs. G. Y. Crenshaw *et al.* Subpœna in chancery (original) Returnable to January rules, 1902. Returned to the clerk's office and filed this 21st day of November A. D. 1901 Calvin C. Colt clerk.

UNITED STATES OF AMERICA,
St. Joseph Division of the Western District of Missouri, } *sct:*

I do certify that I executed this writ by delivering a true copy of the same to the within named John J. Downey, deputy inspector of beer and malt liquors for the State of Missouri. Done at St. Joseph, Mo. this 21st day of November, 1901.

E. R. DURHAM,
U. S. Marshal, Western District of Missouri,
By J. H. GRAHAM, *Deputy*.

Marshal's Fees.

Service	$2.00
Car fare miles travel	20
Total	$2.20

15 *Subpœna.*

(Original.)

ST. JOSEPH DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

The President of the United States to G. Y. Crenshaw, inspector of beer and malt liquors for the State of Missouri, and John J. Downey, deputy inspector of beer and malt liquors for the State of Missouri, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States, for the St. Joseph division of the western district of Missouri, on the first Monday of January next, at the city of St. Joseph, then and there to answer the bill of complaint of the Pabst Brewing Company, a corporation, citizen of the State of Wisconsin, filed against you on the 20th day of November 1901. Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 20th day of November A. D. 1901.

[L. S.] Issued at office in the city of St. Joseph, Mo., under the seal of said circuit court, the day and year last aforesaid.

CALVIN C. COLT, *Clerk.*

MEM.—The defendant to enter their appearance in this suit in the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

CALVIN C. COLT, *Clerk.*

Kansas City, Mo., Nov. 21st, 1901.

We hereby certify that the above and foregoing is a duplicate of the original writ sued out of the circuit court of the United States for the Saint Joseph division of the western district of Missouri in the cause wherein The Pabst Brewing Company is complainant and G. Y. Crenshaw *et al.* are defendants.

HARKLESS, O'GRADY & CRYSLER,
Attorneys for Complainant.

[Endorsed:] No. 235. United States circuit court western district of Missouri, St. Joseph division The Pabst Brewing Company *vs.* G. Y. Crenshaw *et al.* Subpœna in chancery Duplicate original Returnable to January rules, 1902 Returned to the clerk's office and filed this 25th day of November A. D. 1901 Calvin C. Colt clerk.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *sct:*

I do certify that I executed this writ by delivering a true copy thereof as certified by the clerk to the within named defendant G. Y. Crenshaw, inspector of beer and malt liquors for the State of Missouri, at the city of St. Louis, in the eastern judicial district of Missouri, this 22nd day of November, 1901.

LOUIS C. BOHLE,
U. S. Marshal, Western District of Missouri,
By W. W. NALL, *Deputy.*

Marshal's Fees.

Service	$2.00
Miles travel	.06
Total	$2.06

16 And afterwards, to wit, on the 2nd day of January A. D. 1902 the said defendants, G. Y. Crenshaw and John J. Downey, come into the clerk's office of said court and enter their appearance.

And afterwards to wit, on the 1st day of February, 1902 the defendants file in the clerk's office of said court their demurrer to plaintiff's bill, which said demurrer is in figures and words as follows:

In the Circuit Court of the United States for the Saint Joseph Division of the Western District of Missouri.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW, Inspector of Beer and Malt Liquors for the State of Missouri, and John J. Downey, Deputy Inspector of Beer and Malt Liquors for the State of Missouri, Defendants. } In Equity.

The Demurrer of the Above Named G. Y. Crenshaw and John J. Downey to the bill of Complaint of the Above Named Plaintiff.

These defendants, by their protestation, not confessing or acknowledging all or any of the matters or things in said bill of complaint contained to be true in such manner and form as the same are therein set forth and *and* alleged, do demur to said bill, and for cause of demurrer show that there is no equity in the bill; that said complainant has not by its said bill, made such a case as entitles it in a court of equity, to the relief prayed or any relief against these defendants.

And for further and more specific grounds of demurrer these defendants aver as follows:

(1.) That the act of the General Assembly of the State of Missouri, approved May 4th, 1899, set out in the complainant's bill, does not violate any of the provisions of the Constitution of the United States, and is a valid enactment, and it appears, as a matter of law upon the face of the bill, that complainant is not entitled to prevent the enforcement of said statute.

(2.) That it apears upon the face of complainant's bill that the only — in which its interests are affected by the act of May 4th, 1899, referred to therein, is that an inspection fee is charged for all beer sold in the State of Missouri, and, as a matter of law, it is competent and within the power of the State to make such exaction for the privilege of selling beer in said State. It is not alleged in the bill that complainant is making beer out of any of the materials or sub-

stances prohibited by said act, nor is it charged therein that
17 complainant belongs to any of the classes alleged to be discriminated against by said statute, and said complainant is not in a position to challenge the constitutionality of said act in those particulars referred to, in as much as its rights or interests are not affected by said provisions.

(3.) That plaintiff has an adequate remedy at law.

(4.) That a court of equity has no jurisdiction to enjoin criminal prosecutions.

Wherefore, and for divers other good causes of demurrer on the said bill, these defendants do demur thereto. And they pray the judgment of this honorable court whether they shall be compelled to make any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

EDWIN C. CROW,
Attorney General of Mo.,
W. M. WILLIAMS,
Solicitors for Defendants.

We hereby certify that the foregoing demurrer is, in our opinion, well founded in point of law.

EDWIN C. CROW,
W. M. WILLIAMS,
Of Counsel for Defendants.

STATE OF MISSOURI, } ss:
City of St. Louis, }

G. Y. Crenshaw being duly sworn upon his oath, deposes and says: I am one of the above named defendants. The foregoing demurrer is not interposed for delay.

G. Y. CRENSHAW.

Subscribed and sworn before me this 30th day of January, 1902.

[L. S.] THOS. W. CORLEY,
Notary Public, City of St. Louis.

My term expires Feb. 23/1904.

And afterwards to wit, on the 18th day of November A. D., 1902 the complainants herein file- with the clerk of this court a petition for order to file amended bill of complaint, and which said petition is in words and figures as follows:

In the Circuit Court of the United States for the State of
18 Missouri, Western District, St. Joseph Division.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Petition for Order to File Amended Bill of Complaint.

Now comes the complainant after the filing of a demurrer and before replication and prays the court for an order granting it leave and permission to file herein its amended bill of complaint on or before the next succeeding rule day, to-wit, the first Monday of December, 1902, and without payment of costs.

HARKLESS, O'GRADY & CRYSLER,
Solicitors for Complainant.

And upon said petition the court made the following order, to-wit:

Order.

It is hereby ordered this 18th day of November, 1902, that complainant have permission to file in this cause its amended bill of complaint on or before the next succeeding rule day, to-wit: the first Monday in December, 1902, without payment of costs, a copy of such amended bill of complaint to be — complainant delivered to defendants or their solicitors.

JOHN F. PHILIPS, *Judge.*

And afterwards to-wit, on the 19th day of November A. D., 1902 the complainant in this cause filed with the clerk of this court its amended petition, which amended petition is in words and figures as follows to-wit:

In the Circuit Court of the United States for the State of Missouri, Western District, St. Joseph Division.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.
} In Equity.

To the honorable the judges of the circuit court of the United States for the western district of the State of Missouri, St.
19 Joseph division:

Your orator, The Pabst Brewing Company, the above named complainant, being by leave of court permitted to amend its bill herein,

brings this its amended bill against G. Y. Crenshaw and John J. Downey, defendants above named, and complaining says:

First. That your orator is and at all times hereinafter mentioned was, a corporation duly incorporated and doing business under and by virtue of the laws of the State of Wisconsin, is a citizen of the State of Wisconsin and domiciled therein, and having its principal place of business in the city of Milwaukee in said State:

That the defendant, G. Y. Crenshaw, is a citizen of the State of Missouri, resident of the city of St. Louis, in said State; and the defendant John J. Downey, is a citizen of said State of Missouri, resident at the city of St. Joseph, in said State, and within the St. Joseph division of said western district.

Second. That the business of vending and dealing in beer and other malt liquors, now is, and at all times hereinafter mentioned was, in the State of Missouri, and by the laws of the said State, recognized as legitimate trade and commerce, and the manufacture and sale of beer and other malt liquors, and the importation into said State of beer and other malt liquors and the sale of the beer and other malt liquors so imported and the exporta-ion from the State of liquors imported into and thereafter sold within and exported from said State, is, and was, as aforesaid, permitted in, and authorized by, the laws of said State, and was, and is, recognized as a legitimate and lawful trade or calling.

Third. That your orator is, and at all times hereinafter mentioned was, engaged in the business of brewing, manufacturing and selling beer in the State of Wisconsin; and also in the business of importing into and selling in the State of Missouri and other States of the United States, beer manufactured by it in the State of Wisconsin; that your orator manufactures in the said State of Wisconsin, ten different kinds or grades of beer and malt liquors, each kind or grade being seperately made or manufactured and requiring special treatment; that it annually imports into and sells in the State of Missouri, not less than fifteen thousand barrels of beer and other malt liquors, of thirty-one gallons to the barrel, of the aggregate value of not less than one hundred thousand dollars; that such imports consist of every kind and grade of beer and other malt liquors so manufactured by your orator.

Fourth. Your orator further informs your honors that heretofore, to-wit: at the regular A. D., 1899 session of the General Assembly of the State of Missouri, under the pretense of regulating the trade in beer and other malt liquors, but in reality for the purpose of increasing the general revenue of the State, there was considered and passed a certain measure or enactment purporting to be an enactment, into a valid law of the State of Missouri, of certain provisions concerning the manufacture and sale of beer in the State of Missouri, under the title and in specific words and figures, as follows:

"*Inspection—Beer.*

An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors manufactured and sold in the State.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. There is hereby created the office of beer inspector which shall be filled by appointment by the governor by and with the consent of the senate, within thirty days after the taking effect of this act, an inspector of beer and malt products, who shall serve for a term of four years and until his successor is duly appointed and qualified. He shall be an expert beer brewer and a citizen of the United States and of this State for more than two years next prior to his appointment. He shall give a bond in the sum of twenty-five thousand dollars, to be approved by the governor, for the faithful performance of the duties of his office.

SEC. 2. Said inspector shall, with the approval of the governor, appoint such deputies as may be required to carry out the provisions of this act, not to exceed four in number, and such clerical help as may be necessary. Said deputies shall receive for their services the sum of fifteen hundred dollars per annum, and said inspector shall receive the sum of three thousand dollars per annum, all salaries and expenses to be paid out of the sums of money now, or that may hereafter be, appropriated for said purpose.

SEC. 3. Every person, persons or corporation who shall erect or keep a brewery for the manufacture or brewing of beer or other malt products within this State, for the purpose of offering
21 the same for sale, shall cause the same to be inspected by the said State inspector.

SEC. 4. No person, persons or corporation, engaged in the brewing or manufacture of beer or other malt liquors, shall use any substance, material or chemical in the manufacture or brewing of beer or other malt liquors, other than pure hops or pure extract of hops, or of pure barley, malt or wholesome yeast, or rice.

SEC. 5. Every person, persons or corporation who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in this State, shall, upon receipt of same, and before offering — sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops or the extract of hops, or pure barley, malt or wholesome yeast, or rice was used in the manufacture of the same; upon the receipt of said affidavit, the inspector shall inspect and label the packages — said beer or malt liquors, for which services he shall receive like fees as thos-

imposed upon the manufacturers of beer and malt liquors in this State.

SEC. 6. The inspector appointed under this act shall provide himself with an office, and shall record on books kept for that purpose the names and places of business of all persons engaged in the manufacture, brewing and sale of beer and malt liquors. He shall keep a record of all beer and malt liquors manufactured, brewed or sold and the amount produced by each brewery or manufacturer, or sold by dealer. He shall keep a record of all fees collected and of all expenditures incurred, and shall make a full and complete report of the same to the governor upon the first day of each year.

SEC. 7. It shall be the duty of such inspector to cause to be inspected all beer or other malt liquors brewed or manufactured or sold in this State, and if he shall find that such beer or malt liquor has — made from pure hops or the pure extract of hops, or of pure barley, malt or wholesome yeast, or rice, to place upon the package containing such beer or malt liquor his label, certifying that the same has been inspected and made from wholesome ingredients.

SEC. 7*a*. It shall be the duty of the State treasurer upon the taking effect of this act to provide suitable and inimitable State certificates and labels for this inspection, gauging and labeling, having on each proper places for countersigning by the State treasurer and inspector, and shall safely keep the same together with the plates used in making them, when not in actual use. The State treasurer shall from time to time, upon demand, deliver the aforesaid labels to the inspector, taking therefor his receipt, and shall charge said inspector with the same; and shall from time to time as said inspector makes returns of moneys collected in the course of his inspection credit said inspector's account with such sums, and shall keep a true and correct book account of his dealings with said inspector.

SEC. 7*b*. It shall be unlawful for any person to attempt to make or make, to attempt to sell or sell, or attempt to use or use any of the certificates or labels or both provided for by this act, or imitations thereof except such persons as by law are allowed to make, sell and use the same, and any person so offending shall be deemed guilty of a felony, and, upon conviction, be punished by imprisonment in the penitentiary for a term not to exceed five years.

SEC. 8. The inspector shall be entitled to receive for inspecting and guaging one cent for each gallon contained in each package, and two cents for labeling each package. All fees received by the inspector shall be paid into the State treasury. The word package, as used in this act, shall be construed to mean any vessel of any kind other than pint and quart bottles in which any beer or malt liquor may be placed for sale, containing eight gallons or less; when said beer or malt liquors are placed in pint or quart bottles, a package, as used in this act, shall be construed to mean not to exceed forty-eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be

placed in suitable cases containing said number and size of bottles, for inspection and stamping by said State inspector; and when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean each eight gallons or fractional part thereof so contained in said vessel.

SEC. 9. The expense of said office, including the salaries of the inspector and his deputies, shall be paid monthly out of the amount appropriated by *alw* from the general revenue fund on warrants drawn by the State auditor on vouchers approved by the inspector, and all fees received by the inspector under the provisions of
22 this act shall, on or before the last day of each month, be paid into the State treasury by said inspector and shall be placed to the credit of the general revenue fund.

SEC. 10. Any person who shall sell any beer or malt liquor within this State which has not been inspected according to the provisions of this act, or contained in packages which shall not have upon them the certificate of the State inspector, or any person — shall fail to destroy said certificate or label after the contents of said package are disposed of, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period of not less than six months, and in addition thereto shall have his license or other authority, giving him the right to manufacture or sell said liquors in this State revoked, and shall not again receive any such license or other authority for a period of two years thereafter.

SEC. 11. If any inspector shall fail to perform any of the duties imposed upon him by this act, or shall in any manner violate any of the provisions thereof, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days and by a fine not exceeding one thousand dollars, and if any said inspector shall fail to faithfully perform the duties enjoined upon him by this act he may be removed from office by the governor.

SEC. 12. All prosecutions for fines and penalties under the provisions of this act shall be either by indictment or information in any court of competent jurisdiction, and when collected shall be paid one-fourth to the informer and three-fourths into the fund for the construction of public roads and highways in the county in which said offense may have been committed and prosecution begun.

SEC. 13. All beer or other malt liquors manufactured in this State and exported outside of the State for sale, shall be inspected as other liquors designated in this act, but said inspection shall be free of cost to the manufacturer.

SEC. 13a. Every railroad, express or transportation company, shall when requested, furnish to the inspector a duplicate bill of lading or receipt showing the name of the consignor and consignee, date, place received, destination and quantity of beer or malt liquors received by them for shipment to any point within this State. Upon

failure to comply with the provisions herein, said railroad, express or transportation company shall forfeit and pay to the State of Missouri, the sum of fifty dollars for each and every failure, to be recovered in any court of competent jurisdiction. The inspector herein provided for, is hereby authorized and empowered to sue in his own name at the relation and to the use of the State. The penalties collected shall be paid into the State treasury.

SEC. 14. There is hereby appropriated out of the State treasury, chargeable to the general revenue fund, for the years 1899 and 1900, for the pay of the inspector, six thousand dollars; for the pay of four deputies, twelve thousand dollars; for rent, stationery, fuel, printing and such other things as may be necessary for the transaction of the business of said inspector, the sum of six thousand dollars.

Approved May 4th, 1899."

which said alleged act of assembly thereafter and on the 4th day of May, A. D., 1899, was duly approved and thereafter the same was published in the manner by law provided for approval and publication of acts of said General Assembly.

Fifth. That thereafter the defendant G. Y. Crenshaw was, by the governor of the State of Missouri, appointed to an office of said State under the title "Inspector of beer and malt liquors." That such appointment was made and such office alleged to exist, under pretense that the establishment of such office and the making of such appointment was lawfully provided for by said act of assembly, and the defendant, John J. Downey, thereafter was, under pretense that such appointment was lawfully authorized by said act of assembly, by said G. Y. Crenshaw, with the approval of the
23 governor of the State of Missouri, appointed deputy inspector of beer and malt liquors of the State of Missouri; that said defendants duly qualified as was required of such officers by the terms of said enactment, and they now claim to be entitled to act as such inspector and deputy inspector, and entitled to discharge the duties of said respective offices, and claim to be authorized and entitled to enforce and effectuate the provisions of said enactment of the General Assembly, and under pretense of so doing, have publicly stated and announced their intention of enforcing the provisions of said enactment and are enforcing and threaten to continue to enforce the provisions thereof against your orator to the grievous and continued injury of your orator in its said business.

Sixth. Your orator further states that there are persons, firms and corporations engaged in the manufacture and sale of beer in the State of Missouri, as follows: The American Brewing Company, the Consumers Brewing Company, the Home Brewing Company, Anheuser-Busch Brewing Association, the Columbia Brewing Company, the National Brewing Company, Louis Ebert, the St. Louis Brewing Association and the Wm. J. Lemp Brewing Company, the Ferdinand Heim Brewing Company, Rochester Brewing Company,

G. Muehlebach Brewing Company, Jacob Moerschel, Charles Schibi, the Ste. Genevieve Brewing & Lighting Association, the M. K. Goetz Brewing Company, John Jester, the St. Joseph Brewing Company, the Moerschel Brewing Company, the Springfield Brewing Company, John B. Busch, the Weston Brewing Company, the Cape Brewing & Ice Company, Herl-Redlin Brewing Company, Elizabeth Reidel, Hugo Kropp, the Capital Brewing Company and Caspar Ludwig.

That the persons, firms and corporations last heretofore named, manufacture annually within the State of Missouri, not less than 2,250,000 barrels of beer of 31 gallons each; of the aggregate value of not less than $12,250,000.00 of which amount they sell in the State of Missouri not less than 1,275,000 barrels of 31 gallons each of the aggregate value of not less than $6,375,000.00.

Seventh. That in addition to the plaintiffs herein, and the persons, firms and corporations hereinbefore mentioned as manufacturing and selling beer in the State of Missouri, there are persons, firms and corporations engaged in manufacturing beer in other States, and particularly in the States of Illinois and Wisconsin, who annually ship into and sell in the State of Missouri, of the beer
24 manufactured in said States, not less than one hundred and sixty-five thousand barrels of 31 gallons each of the aggregate value of $10,725,000.00. That in addition there are large quantities of ale imported into the State of Missouri from other States in the Union.

That in addition to the foregoing there *is* imported into the State of Missouri by various persons, firms and corporations engaged in the sale of beer, large quantities of beer from foreign countries, manufactured in foreign countries and especially beer from Germany and ale from England, and that the aggregate of such additional shipments of beer and ale imported from foreign countries manufactured in foreign countries, and sold in this State, amounts to an annual importation and sale of about fifteen hundred barrels of thirty-one gallons each, of the aggregate value of $10,000.00.

Eighth. That beer, whatever cereals may be used in its manufacture, must, for the purpose of sale and consumption, be enclosed in tight packages of glass or of wood, and when so prepared for sale by enclosure in such tight packages, the packages thereafter cannot be opened without injury to the contents; that such packages are never opened except for the purposes of immediate consumption; that to open the same otherwise than for the immediate consumption of the contents so affects the beer as to rende- it stale, flat, unpalatable and sour and a complete loss. Your orator further states that the average price of beer manufactured and sold in the State of Missouri, exclusive of the United States revenue stamps, is five dollars ($5.00) per barrel of 31 gallons, and the average price per barrel of like capacity of beer manufactured out of and imported into the State of Missouri for sale is six and 50/100 dollars ($6.50).

Ninth. Your orator further shows unto your honors, that of beer

manufactured in the State of Missouri, there is exported from said State annually, not less than 975.000 barrels of 31 gallons each, of the aggregate value of about $4.875.000.00. That of the beer and malt liquors manufactured out of and imported into this State from other States and from foreign countries, there is exported from this State in the original unbroken packages not less than 400.000 barrels of 31 gallons each of the aggregate value of $2.600.000.00.

Tenth. Your orator further states that the said enactment of May 4th 1899, purports by its title, to be an inspection law only, enacted in pursuance of the public policy of the State and under its police power, to protect the public health and provide for the welfare of the citizens and inhabitants of the State, but your orator avers,
25 and so alleges the fact to be, that such enactment is not solely and alone an inspection law which said State might validly enact and enforce, but contains a revenue measure in this that the said inspection fee authorized by the said act to be charged on account of the inspection of beer and malt liquors and so authorized under pretense of meeting the legitimate cost of inspection is, in effect, a tax. That the entire expenditure authorized on account of actual inspection, as provided by the act itself, amounts to twelve thousand dollars ($12,000.00) a year, and no greater expense is authorized to be incurred on such account, while said enactment provides for the collection of fees from those engaged in the manufacture and sale and in the importation and sale of beer which when so collected upon beer annually sold in the State of Missouri, as hereinbefore set forth, amount to not less than five hundred and fifty thousand dollars ($550,000.00), an excess of more than five hundred thousand dollars ($500,000.00) above the cost of inspection; that the fee chargeable under said enactment upon beer and malt liquors manufactured out of and imported into the State from other States and from foreign States, exceeds the total authorized cost of inspection in any one year by not less than sixty thousand dollars ($60.000.00); that said excess of five hundred thousand dollars ($500,000.00) is, by the terms of the act, and by its necessary operation and effect, a specific tax upon beer sold in the State of Missouri and upon beer imported into said State from other States of the Union and from foreign countries and sold in said State of Missouri, and upon beer and malt liquors, which, being so imported, have not yet by sale become amalgamated into the general mass of the property in said State, and is levied for the purpose of replenishing and enriching and is required by the act to be turned into the general revenues of the State for the uses of such general revenue; and your orator further states that said bill, as introduced into the senate of the State of Missouri, was recognized by its framer to be a revenue bill and was entitled, when the same was introduced, "An act creating the office of inspector of beer and malt liquors and providing for an increase in the general revenue of the State." And that the said bill was treated throughout as a revenue measure and was sup-

ported as such by those who defended and voted for it in the senate and in the house of representatives of the Missouri General Assembly.

That the tax imposed under and by virtue of the said act is, in addition to the tax already paid by your orator on the product of your orator's manufactury in Wisconsin shipped into and sold
26 in the State of Missouri, and that the said tax is imposed solely upon the manufacturers of beer in Missouri whose product is sold in said State and upon the product of the manufactory of your orator, in Wisconsin, and of the foreign located breweries of all other brewers non-resident and non-citizens of the State of Missouri, which is imported into the State of Missouri, and before sale of such product so imported has been made, and before import bulk broken, while no such tax or charge is authorized, levied or charged upon beer and malt liquors, the product of breweries and manufactories located in said State of Missouri, where such product is intended for export from said State, though by said enactment the duty of inspecting and certifying to such domestic product so intended for export, is imposed upon such inspector of beer and malt liquors and his deputies, without other compensation for such services than his regular salary by such enactment provided, by reason whereof your orator charges that it is deprived of the protection of equal laws and of the equal protection of the laws.

Eleventh. Your orator further states that it is advised and does believe and so charges, that the said act of the General Assembly of May 4th, 1899, hereinbefore fully set out, is unconstitutional, inoperative and void, and that it is against the common rights and of no binding force, validity or effect for the following reasons, to-wit:

1. Because the said act of May 4th, 1899, is violative of section one of the fourteenth article of amendment to the Constitution of the United States, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and also violative of section two of article four of said Constitution of the United States, which provides that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. Your orator states that said act of May 4th, 1899, violates said provisions of the Constitution of the United States in this: that said act arbitrarily selects the finished product of the non-resident and non-citizen of the State who is a manufacturer of beer and malt liquors importing his finished product into the State of Missouri, and imposes upon such product a tax *over* and greater than is imposed upon the finished product of manufacturers
27 of beer in the State of Missouri, or upon the property of any other person or class of persons in the State. That by reason of said arbitrary, unjust and unreasonable discrimination and class legislation, said act denies the foreign manufacturer of beer and malt liquors who imports his finished product into the State of Mis-

souri, equality before the law and deprives *them* of the protection of equal laws to which *they are* entitled.

2. Your orator further states that it is authorized by general license to carry on business in the State of Missouri and that its business in the said State consists almost wholly of importing into said State, for the purpose of sale therein and re-export therefrom upon said sales, the product of the manufactory of your orator in the State of Wisconsin. That in the usual course of its business in such commerce it is compelled to and does maintain large warehouses and storerooms in the State of Missouri and is compelled to and does maintain an office therein as a necessary adjunct to the proper and economical conduct of its said business and commerce; that of the beer imported annually into the State of Missouri by your orator, a great portion, to-wit: not less than seventy-five hundred barrels of 31 gallons each, of the aggregate value of fifty thousand dollars ($50.000.00) is intended for export to other States and is sold and exported to other States. That in the due course and conduct of its said business, such beer is unloaded by your orator from the cars in which it has been imported into the State and is stored, in unbroken bulk, and in the original packages in which the same was imported, in the storehouses and warerooms of your orator, in the State of Missouri, That sales of such imports, in the unbroken and original packages in which imported, are thereafter effected by your orator, in the State of Missouri, to persons resident without and non-citizens of the State of Missouri, for export by your orator therefrom, and for delivery by your orator, in such original packages to the purchasers thereof at agreed points in other States and countries; that such imports of your orator, when so sold, are thereafter exported from the State of Missouri by your orator, as aforesaid, and no part or portion thereof is consumed within the State; that upon such imports so thereafter by your orator sold for export and so exported by your orator, your orator is compelled to pay and under protest, and in order to protect its property and rights from greater injury, does pay, to the State of Missouri, the same being exacted of your orator under the alleged authority of said enactment of the General Assembly, the sum of 39 cents per barrel as a tax, such payments so compelled to be made by your orator, amounting in the aggregate to three
28 thousand dollars ($3,000.) or thereabouts, annually; that if such tax be not paid by your orator to said State, your orator's servants and agents will be apprehended, fined and imprisoned as by said alleged enactment provided. to the great and irreparable injury of the business and property rights of your orator, and your orator's general license to carry on its business within the State will be revoked and annulled and no other license will be issued to it within a period of two years; in which event your orator's business within the State of Missouri will be wholly destroyed and its property rights irreparably injured, and the defendants, and each of them, threaten to enforce against your orator, in the courts of the State, all of the penalties prescribed by said enactment for a breach

of the provisions thereof should your orator refuse to pay such assessments, charges and taxes.

Your orator avers that said alleged enactment of the General Assembly of Missouri, unjustly discriminates against your orator in this; that beer, the product of the breweries of brewers, citizens of Missouri, and whose manufactories are situated therein, which product is intended for export from said State, are exempt from the payment of said tax and assessment to the full extent of their exports of said manufactured product, *which* your orator being an importer of foreign made beer into the State and engaged in selling within the State the beer so by it imported, for export from the State, and being engaged in so exporting its imports so by it sold, is compelled to pay to the full the said tax and assessment upon its said exports from the State, as aforesaid, by reason whereof your orator, being engaged in interstate commerce, as aforesaid, is deprived of its property without due process of law, and is deprived of the protection of equal laws and of the equal protection of the laws, contrary to the provisions and in violation of the first section of the fourteenth amendment to the Constitution of the United States; and the rights secured to your orator by section 2 of article 4 of the said Constitution are violated and destroyed in that your orator being a citizen of the State of Wisconsin engaged in interstate commerce is unjustly discriminated against in favor of domestic manufacturers in the manner and to the extent aforesaid, to the continued, great and grevious injury of your orator; that by reason of the premises said alleged enactment violates the provisions of clause three of section eight, article one of said Constitution, in that it seeks to regulate, by State enactment, commerce between
29 the States, all of which is contrary to the rights and privileges guaranteed to your orator and to your orator preserved by the said provisions of the Federal Constitution.

3. Your orator further states that said act violates the provisions of the fourteenth ame-dment to the Constitution of the United States in this, that by the terms of said enactment it is made the duty of the inspector of beer and malt liquors and his deputies, to inspect and certify to all beer manufactured in the State of Missouri, and intended for export from said State; that said inspector and his deputies are forbidden to collect from such domestic manufacturers of beer intended for export, any fees whatever for the services rendered. That said inspector and his deputies are paid a stated salary annually for all services rendered by them under said act, which said salary is, in each instance, paid out of the fund resulting from fees derived from inspections made of beer sold and to be sold within the State; that complainant is compelled to contribute largely to said fund, as aforesaid, to-wit: more than five thousand dollars ($5,000.00) annually and more than five-twelfths annually of the entire amount authorized as the entire annual expense of inspection in the whole State of Missouri, and thus bears a proportionate amount of the salaries payable and paid to said beer inspector and

his deputies, although the total imports of your orator is only one-eighty-fifth (1/85) of the whole amount of beer sold within the State by producers of beer within the State; is only one-ninety-fifth (1/95) of the entire amount of beer sold within the State and although such imports by your orator amount to only one-onehundred and fiftieth (1/150) of the whole amount of beer manufactured within the State of Missouri. That by reason of the premises the finished product of manufactories of beer located without the State, and imported into the State for sale, are unjustly discriminated against in favor of the finished product of like nature made by citizens of the State of Missouri within said State, and such foreign products compelled to bear the burden of the cost of inspection of such domestic product intended for export, by reason of which your orator, in common with other importers of beer into the State of Missouri, is deprived of its property without due process of law and is denied the equal protection of equal laws and the equal protection of the laws to which it is entitled under the said fourteenth amendment to the Constitution of the United States.

4. Your orator further states that the said act of May 4th, 1899, violates the provisions of the fourteenth amendment of the Constitution of the United States in this, that said act while discriminating, as aforesaid, against beer imported into the State, and in favor of the domestic product of like nature, declares that any violation of the same shall be a misdemeanor, and then provides further, that such misdemeanor shall be punished by fine or imprisonment, or both, and in addition thereto the offender shall have his license or other authority giving him the right to manufacture or sell beer or other malt liquors in the State, revoked, and shall not again receive any such license or other authority for a period of two years thereafter; that such punitory provision is applicable, by the terms of said act, to the importers of beer manufactured in other States and countries and imported into the State of Missouri and is applicable to your orator, by reason whereof, your complainant is deprived of its constitutional right to so use its property to the best advantage and profit, as is permitted to citizens of the State of Missouri, similarly situated, whereby it is deprived of its property without due process of law and is denied the protection of equal laws and of the equal protection of the laws.

5. Your orator further states that the said act of May 4th, 1899, is repugnant to the provisions of the Constitution of the United States concerning the regulation of interstate commerce, being section eight of article one of said Constitution, as well as to section two of article four of said Constitution, declaring that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, and to the second clause of section ten of article one of said Constitution, which provides that no State shall, without the consent of Congress, lay any imposts or duties upon imports or exports except what shall be absolutely necessary for executing its inspection laws; and is also further repugnant to section one, of the

fourteenth amendment to the Constitution of the United States, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the law." Your orator states that the said act of May 4th, 1899 violates the above provisions of the Constitution of the United States in this, that it requires all beer and malt liquors imported into the State of Missouri from other States and Territories or foreign countries, while still in the original packages and before being offered for sale, to be inspected and labeled and said tax of one cent
31 per gallon and two cents per package hereon to be paid and also as a pre-requisite to the right to sell beer imported into the State of Missouri, to be accompanied by an affidavit from the manufacturer or other reputable person having actual knowledge thereof, that no material- other than those specified in said act were used in the manufacture of said beer or malt liquor, and also that the person or corporation receiving beer or malt liquors for sale from other States and Territories or foreign countries shall, before offering the same for sale, submit the said imports for inspection as aforesaid, and shall procure from said inspector a certificate that such beer or malt liquor has been made exclusively of the ingredients specified in said act. Your orator respectfully shows unto your honors that no requirement is made of domestic vendors or domestic manufacturers and vendors of beer for the furnishing of such affidavits; that each carload imported by your orator into the State of Missouri consists of more than one kind or grade of beer, or of beer and other malt liquors, each the result of a different process of manufacture; that each different grade or kind of beer, and of other malt liquors, is, by said defendants, treated as a seperate shipment, though consigned to and delivered to your orator in the same carload lot; that such affidavit is required of your orator by the terms of said alleged enactment of the General Assembly of Missouri, with each shipment of its imports into the State; that your orator does, under protest, furnish said required affidavits; that such affidavits must be made before some officer authorized by law to administer oaths; that to procure each affidavit and the certificate of the officer thereto, your orator is compelled to and does expend the sum of fifty cents; that the shipment of beer and malt liquors made by your orator into the State of Missouri averages 2,000 annually and that to furnish the requisite affidavits to accompany the same your orator is required to expend annually the sum of one thousand dollars; that the requirement of the said affidavits imposes great and unnecessary expense and cost upon your orator and others engaged in foreign and interstate commerce; that though such affidavits are required of importers of beer into the State of Missouri, yet such affidavits when furnished, in nowise are permitted to have any force or effect in aiding the work of inspection, but each shipment is required to

be inspected, notwithstanding the furnishing of such affidavits whereby your orator, as an importer, is grievously discriminated against in favor of the domestic dealer in beer, and has imposed upon it grievous, burdensome and unnecessarily harsh regu-
32 lations which are not imposed upon domestic producers and vendors of beer, all of which your orator states is in violation of the provisions of the Constitution of the United States hereinbefore set forth.

Twelfth. Your orator further shows unto your honors that by said enactment there is levied upon the product of the manufactory of your orator, imported into the State of Missouri the said tax, in each year, the said sum of thirty-nine cents per barrel of 31 gallons which tax or charge so levied against the imports of your orator exceeds in the aggregate the amount or sum of five thousand dollars annually. That your orator is duly licensed by the State of Missouri to engage in the sale of beer within said State. That said defendants, and each of them, have, under the pretended authority of said enactment, and under pretense of performing the lawful duties of their alleged respective offices, forced your orator to pay the tax so levied upon the beer imports of your orator into the State of Missouri since the said 4th day of May, 1899, amounting in the aggregate to about twenty thousand dollars, to the date of the filing of this bill, and said defendants and each of them threaten to collect from your orator, by enforcement of said pretended enactment, still further and greater sums of money each and every year; that your orator has paid said sums of money under protest and because it was and is without remedy in the premises in the courts of the State of Missouri; which said courts have sustained and still sustain said enactment as a valid law of the State of Missouri.

Thirteenth. Your orator further states that it is engaged in the manufacture of beer in the State of Wisconsin and in the sale of its manufactured product in the State of Wisconsin and Missouri and other States of the Union; that its principal place of business is situated in the city of Milwaukee in the State of Wisconsin; that for many years last past it has owned and managed and still owns and manages in the city of Kansas City, Missouri, a depot or agency in which, during all of said time, it has been continuously storing and depositing the product of its manufactory. That in due and ordinary course of its business at frequent intervals it ships from its manufactory aforesaid, to its depot in the city of Kansas City aforesaid, beer in barrels, kegs and bottles, which are placed and kept in its said depot until the same are removed therefrom and delivered to its customers in the State of Missouri and elsewhere. That it has no brewery or plant or manufactory for the brewing or manufacture of beer or other malt liquors in the State of Missouri; that its business as conducted and maintained in the State of Missouri, consists solely in its maintaining the
33 depot in which it stores the product of its brewery, and in due course of its business it removes it from said depot and

delivers it in original pa-kages to its customers. That none of the product sold by your orator is manufactured or brewed in the State of Missouri, but that all its product which is stored or handled in the State of Missouri is manufactured in the State of Wisconsin, and is there put into barrels, kegs and bottles, and when thus put up it is shipped to and stored in its depot in the city of Kansas City, as originally put up and the same is thereafter removed therefrom and delivered to its customers in the same original packages; that in order for it to transport its product from the State of Wisconsin to the city of Kansas City and introduce the same in the State of Missouri, it is necessary to have in said State a depot or agency in which to store its product so shipped so that it may be thereafter removed therefrom and delivered to its customers; that its depot or agency is used as a place of storage and for no other purpose whatever, and in transporting its product from the State of Wisconsin to the State of Missouri and introducing the same therein, in order to preserve its said product fit and proper for consumption, it is necessary for it to have such depot or agency in which to keep said product. That it has for many years past conducted its business as aforesaid and it desires and intends to so conduct its business in the future.

That for the purpose of its said depot and agency in said Kansas City, Missouri, it owns and maintains large warehouses and storage houses especially constructed for its said business, and which would be of little or no value for any other business, all of great value, to-wit: of the value of fifty thousand dollars ($50,000.00); and owns and uses a large number of horses and wagons and other property of great value to-wit: of the value of one hundred thousand dollars ($100,000.00); and has built up and enjoys a large and well established trade and business from its said depot and agency in Kansas City, Missouri, which yields it a large revenue and profit, to-wit: annually profits to the amount of twenty thousand dollars ($20,000.00). And your orator states that unless the relief herein prayed for is granted, your orator's said property will be rendered wholly worthless and of no value and its said business will be wholly destroyed and its said income and profits lost to it.

Fourteenth. Your orator shows unto your honors, that said
34 enactment further unjustly and injuriously discriminates against your orator and in favor of the citizens of the State of Missouri who are producers of beer within said *said* State and for consumption therein in this: that by such enactment the product of the breweries of said citizens of Missouri may be inspected while the same is in the course of manufacture and before the same is bottled, barreled or otherwise enclosed in packages or vessels for sale, and without the destruction of any portion of the property of said citizens of Missouri for the purpose of such inspection; that after said beer shall have been enclosed in tight glass or wooden vessels, as hereinbefore alleged, in which form only it can be imported into Missouri from other States or countries, the said packages or vessels

cannot be opened without destruction to the contents of such vessels; that such wooden vessels are usually of 31 gallons' capacity and the average value of the contents of each thereof is $6.50; that by the terms of said alleged enactment each shipment into the State must be inspected; that to make such inspection one or more of said vessels of each shipment must be opened, involving the total loss of the contents thereof to your orator; that many such imports by your orator are composed only of barrels of 31 gallons' capacity each, to each shipment; that your orator manufactures in Wisconsin and imports into the State of Missouri ten different kinds or grades of beer and malt liquors; that each carload of your orator's said manufactures by it imported into the State of Missouri and consigned to your orator, almost invariably consists of several different kinds or grades of beer and malt liquors, seperately manufactured, and each kind or grade, as construed by the defendants, constituting a seperate and distinct shipment requiring seperate and distinct inspection as to each such shipment; that each such carload imported by and consigned to your orator containes, on an average, four kinds or grades of beer and malt liquors; that the inspection of every such shipment involves the destruction of the contents of at least one vessel of each shipment, of the average value of $6.50, whereby your orator will be subjected to heavy and continuous losses in and destruction of its property; that the citizens of the State of Missouri who manufacture and sell beer in the State and who manufacture beer therein for export, are not subject to such losses or any loss in course of inspection, in this, that such inspection of domestic products is made and is authorized by said enactment to be made, while the same are in course of manufacture and before the same are enclosed in wooden or glass cases; that by reason of the premises your orator is deprived of the equal protection of the laws and of the protec-
35 tion of equal laws, and is deprived of its property without due process of law, and said State of Missouri unjustly discriminates against and imposes grievous burdens upon your orator, in violation of the exclusive right of the United States to regulate commerce between the States; that by reason of the premises said pretended enactment is null and void and of no force.

Your orator states that the act providing for the inspection fees are further a violation of the provisions of the Constitution above set forth in this, to-wit: that all the beer stored in the depot or agency belonging to your orator, is imported from another State, as aforesaid, to-wit: the State of Wisconsin, in original packages, and that while the State has a right to enact a police regulation in reference to the beer so imported, it has no right to impose an inspection fee which shall go into the general revenue of the State and thereby become a revenue regulation, and under the guise of enforcing the police powers of the State, tax the finished product of your orator thus imported from the State of Wisconsin into the State of Missouri, for general revenue purposes and that said act is purely a revenue bill and not a police regulation, and that the

power to levy taxes for revenue purposes is distinct from the police power.

That the defendants pretending to act as such beer inspector and deputy beer inspector respectively, have instituted and caused to be instituted in the State of Missouri, a large number of criminal prosecutions, to-wit: about nine thousand criminal prosecutions for alleged violations of said act, and have threatened, and are about to, unless the relief herein prayed for be granted, and will, institute prosecution- against your orator and its customers in the State of Missouri, and other persons, firms and corporations similarly situated, all of which will produce irreparable injury and damage unto your orator and others similarly situated and for which it would have no adequate remedy at law.

Your orator further states that the enforcement of said act of the General Assembly of May 4th, 1899, would, for reasons herein-before stated, cause irreparable damage to the business of your orator and all other persons similarly situated in the State of Missouri. That the number of persons engaged in the brewing and sale of malt liquors, and who are affected by the terms of said act, is large, and that this action is brought by your orator for itself and on behalf of all persons similarly situated, in order to avoid a multiplicity of suits and to prevent irreparable damage to the property
36 and business of each of them.

Your orator further shows that beside the irreparable damage which will be inflicted upon its property and business by the inspection of beer as hereinbefore more fully set out, the act in question provides for heavy fines and penalties and imprisonment of all brewers who fail to conform to its provisions and who sell their product without submitting the same to such inspection and who fail to pay the unconstitutional tax imposed by said act, and said act provides that a prosecution and conviction for failure to comply with the terms of said act and of the payment of the tax shall — followed by the forfeiture of the brewer's right to manufacture and sell beer and other malt liquors in the State for a period of two years thereafter, which would cause ruinous damage to plaintiff's business and that of others similarly situated, in which large capital is invested, and in which many thousands of persons are employed.

Your orator further states that by reason of the facts hereinbefore set out, it is without adequate remedy at law, and that it now comes into a court of equity and prays for relief under the facts and circumstances herein stated, and your orator further states that unless the relief hereinafter prayed for is granted the damage to your orator and all others similarly situated will be irreparable and a multiplicity of suits will result.

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said defendant may answer the premises but not upon oath or affirmation the benefit whereof is expressly waived by your orator, it now prays the

court that an — of injunction may issue out of this court directed to the defendant, the said G. Y. Crenshaw, claming to be the inspector of beer and other malt liquors in the State of Missouri, and to the defendant, John J. Downey, claiming to be deputy inspector of beer and other malt liquors in the State of Missouri, enjoining and restraining them their deputies, agents and servants, and each of them from enforcing or attempting to enforce said act of the General Assembly of May 4th, 1899, and from inspecting or attempting to inspect the beer or other malt liquors manufactured or offered for sale by your orator or others similarly situated, and from collecting or attempting to collect any tax or inspection fee under said act and from attempting to enforce said act as against any customer of your orator and others similarly situated; and your orator further p-ays that the said act of the General Assembly of the State of Missouri, be declared null and void, and for such other and further relief in the premises as the nature of the circum-
37 stances of the case may require, and may it please your honors to grant to your orator a writ of subpœna, to be directed to the said G. Y. Crenshaw, and John J. Downey, thereby commanding them at a certain time and under a certain penalty therein named, personally to appear before this honorable court, and then and there offer true, direct and perfect answer to make to all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made against him in the premises, as shall seem meet and agreeable to equity. And your orator will ever pray.

HARKLESS, O'GRADY & CRYSLER,
Att'ys for Complainant.

STATE OF MISSOURI, } ss:
County of Jackson, }

George Schrader being duly sworn upon his oath deposes and says that he is agent for the Pabst Brewing Company and makes this affidavit on its behalf; that he has read the foregoing amended bill and that the matters and facts therein stated and contained are true.

GEO. SCHRADER.

Subscribed and sworn to before me this 17th day of November, 1902.

[L. S.] LENDRUM B. RIDGE,
Notary Public, Jackson County, Missouri.

My term expires Sept. 15th, 1906.

38 And afterwards to-wit: on the 9th day of February A. D., 1903 the following order was made and entered on the journal of said court, to-wit:

In the District Court of the United States for the St. Joseph Division of the Western District of Missouri.

PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Order.

The demurrer interposed by defendants to the bill of complaint having been heard by the court, the complainant appearing by its counsel Messrs. Harkless, O'Grady & Crysler and Francis Downey, and the defendants by William M. Williams with E. C. Crow, attorney general of Missouri, and the court having taken the same under advisement, and being now fully advised in the premises:

It is ordered by the court that said demurrer be, and the same is hereby, overruled, and the defendants have leave to file answer to the bill on or before the next rule day of court, and the complainant has leave to file thereto reply within fifteen days after notice of the filing of the answer, when this cause shall stand at issue.

JOHN F. PHILIPS, *Judge.*

And afterwards to-wit:—on the said 9th day of February A. D., 1903 the Hon. John F. Philips judge of said court handed down and there was filed in the clerk's office of said court his opinion, which said opinion is in words and figures following, to-wit:

39 In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

THE PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW ET AL., Defendants. } In Equity.

Messrs. Harkless, O'Grady & Crysler and Francis C. Downey, Esq., attorneys for complainant.

Wm. M. Williams, Esq., with E. C. Crow, Esq., attorney general of Missouri, attorneys for defendants.

Statement of Case by the Court.

This is a bill in equity to enjoin the defendants, G. Y. Crenshaw, as State beer inspector, and his assistant, from enforcing against the complainant, a corporation of the State of Wisconsin, the provisions of an act of the legislature of the State of Missouri, entitled, "An act creating the office of inspector of beer and malt liquors of the

State and providing for the inspection of beer and malt liquors manufactured and sold in this State," approved May 4, 1899, (Session Laws of Missouri, 1899, p. 228). The bill sets out the act, the substantive provisions of which are, that it creates the office of beer inspector, to be appointed by the governor of the State, and defines his duties.

Section 3 provides that every person or corporation keeping a brewery for the manufacture of beer or malt products within the State shall cause the same to be inspected by said inspector.

Section 4 requires that such malt liquor shall contain no other substances than pure hops, or pure extract of hops, or pure barley, malt, or wholesome yeast, or rice.

Section 5, which it is conceded has special reference to the beer or malt liquors manufactured without the State, provides, in substance that every person or corporation who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in this State shall, upon receipt of same, and before offering for sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops or the extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of the same: "Upon receipt of said affidavit, the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beer and malt liquors in this State."

Section 6 provides for the keeping of books and record of fees collected, and expenditures incurred, to be reported to the governor of the State.

Section 7 makes it the duty of the inspector to cause to be inspected all beer or other malt liquors brewed, manufactured or sold in this State, and if found to come up to the requirements of the statute, he shall place upon the package containing such beer or malt liquor his label, certifying that the same has been inspected, and is made of wholesome ingredients.

Section 8 fixes the inspection fees at one cent for each gallon contained in each package, and two cents for labeling each package, which fees are to be paid into the State treasury. The word "package" as used in the act shall mean any kind of vessel, other than pint and quart bottles, in which any beer or malt liquor may be placed for sale, containing eight gallons or less; when said beer, etc., is placed in pint or quart bottles, a "package" shall be construed to mean not to exceed forty-eight pint bottles or twenty-four quart bottles, which, when manufactured and so bottled, must, before sale, be placed in suitable cases containing said number and size of bottles, for inspection and stamping by said State inspector; and when placed in vessels containing more than eight gallons, the word

"package" shall mean each eight gallons or fractional part thereof so contained in said vessel.

Section 9 provides that the expense of said office, including the salaries of the inspector and his deputies, shall be paid monthly out of the amount appropriated by law from the general revenue fund; and all fees received by the inspector under the provisions of the act shall, on or before the last day of each month, be paid into
41 the State treasury, and placed to the credit of the general revenue fund.

Section 10 declares that any person who shall sell any beer or malt liquors within this State which has not been inspected according to the provisions of the act, or contained in packages which shall not have upon them the certificate of the State inspector, etc., shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period not less than six months, and in addition thereto shall have his license or other authority, giving him the right to manufacture or sell said liquors in this State, revoked, and shall not again receive any such license or other authority for a period of two years.

Section 12 provides that all prosecutions for violations and penalties under the provisions of the act shall be either by indictment or information in any court of competent jurisdiction.

Section 13 declares that all beer or other malt liquors manufactured in this State and exported outside of the State for sale, shall be inspected as other liquors designated in this act, but said inspection shall be free of cost to the manufacturer.

The bill of complaint, in its substantive allegations, states that the complainant is a manufacturer, in the State of Wisconsin, of grades of beer and malt liquor, requiring special treatment; and that it ships into the State of Missouri, annually, not less than 15,000 barrels of beer and other malt liquors, of thirty gallons each, of the aggregate value of not less than $100,000; that it has a warehouse in the State of Missouri in which its beer is stored; about one-half shipped into the State is subsequently re-shipped from its said warehouse and sold in other States. The bill states that a large number of persons are engaged in the manufacture of beer in the State of Missouri, a large quantity of which is for sale in the State and also for export therefrom; and that a very large quantity is also shipped into the State from other States and countries.

It is charged that said act of the legislature is in conflict with the Constitution of the United States, and is violative of the
42 complainant's rights thereunder, and especially under the fourteenth amendment thereto. The bill then proceeds to set out, with considerable specification, the objections to the validity of the statute, which may be briefly stated as follows:

1st. That the act imposes upon the product of the importer into the State a greater exaction than upon the product of the manufacturer in the State, or is imposed upon the property of other persons

in the State, and is, therefore, an unjust discrimination against the non-resident brewer; and is, therefore, in conflict with the fourteenth amendment and the interstate commerce clause of the Federal Constitution.

2nd. That not less than 7500 barrels of 31 gallons each, of the value of $50,000 shipped into the State by the complainant, is intended for subsequent exportation to other States; and is sold and reshipped to other States in the original packages, although brought into the State and stored in complainant's warehouse; and that complainant is compelled to pay, and does pay, to the State inspection fees upon that part of its product intended for other States, in violation of section 8 of article 1 of the Constitution of the United States.

3rd. That such inspection fees are not required to be paid on the beer manufactured in the State of Missouri and exported therefrom, while such fees are required on the beer manufactured outside of the State by complainant and shipped through Missouri into other States.

4th. That while $12,000 is appropriated for the cost of inspection, and that as no part of this sum is paid by the manufacturer of beer in the State of Missouri upon their products exported for sale, an unjust proportion of these salaries is collected from the complainant.

5th. That the act requiring the non-resident brewers to furnish an affidavit of the ingredients from which his beer is manufactured costs the complainant one thousand dollars annually, while the domestic manufacturers are not required to furnish such affidavits; and that when such affidavit is submitted it is of no force or effect, and does not take the place of an inspection. But that the act, nevertheless, requires in addition to such affidavit an inspection, which necessitates the breaking open of the packages in which the beer is contained, and that this will result in the destruction of at least one package of each shipment, as the beer in the bottle
43 opened will become "stale, flat and unprofitable."

In one paragraph of the bill it is alleged, in terms, that a large per cent. of the beer shipped by the complainant is stored in this State, in the original packages, or bulk, temporarily, for distribution and sale outside of the State, without breaking the original packages; and that the defendants subject such to the demands of the State under said act to the inspection fees; that they have caused persecutions to be instituted for violations of the act for refusals to pay such fees, and threaten further prosecutions, to the great annoyance of the complainant, attended with exposure to a forfeiture of its right to transact its business in the State; the particulars of which averment will more fully appear in the opinion of the court.

To this bill the defendants demurred, on the ground (1) that the act of the legislature in question is a valid law, and in no wise conflicts with any of the provisions of the Constitution of the United States.

(2.) That the bill states no ground for equitable relief, in that it is apparent that the defendants cannot do, and are not threatening to do, anything except to receive the affidavits that may be voluntarily submitted to them, and to label with the proper certificate the packages containing beer which they may be asked by complainant to label.

(3.) That the defendants under the act are not charged with the duty of instituting or prosecuting criminal proceedings for its violation; but the statute requires such violations to be by indictment or information; and even if it were the defendants' duty to institute such proceedings, a court of equity will not interfere by injunction for the sole purpose of preventing such prosecutions.

44 Opinion by PHILIPS, *D. J.*:

It is conceded to the complainant that the bill is not obnoxious to the objection that this is a proceeding against the State as such. It is directed against the defendants in their individual capacity, who, under the color of their office as inspectors, are alleged to be enforcing a legislative act in contravention of the Constitution of the United States, and, therefore, such act affords them no protection as representing the State. Counsel for defendants at the hearing conceded this.

The supreme court of the State, in State *ex rel.* *vs.* Wood, 155 Mo. 425, and State *vs.* Bixman, 162 Mo. 1, has affirmed the validity of the statute in question under the constitution and laws of the State. It held that the statute was not a revenue measure, as distinguished from a mere inspection fee or license under the police power of the State; that the manufacture and sale of intoxicating liquors in the State, not being the nature of a natural right, it is competent for the State, in permitting such occupation and business, to make such regulations and conditions therefor, in the interest of the public health of the people, as the legislature, in the exercise of police power of the State, may deem fit and proper to impose.

No matter, therefore, what may be the opinion of this court respecting the correctness of that ruling, in so far as it rests upon the constitution and laws of the State, it must adopt and follow such construction by the highest court of the State. Carghill *vs.* Minnesota, 180 U. S. 453, l. c. 466–467.

The important question, therefore, for the determination of this court is whether or not the act on its face, as applied to the instance and situation of this complainant, is in conflict with any of the supreme provisions of the Federal Constitution?

The act in question does not impose upon imported beer any greater inspection fee than upon the domestic manufactured article. This being true, although the mode of ascertaining and collecting be different, being necessarily so, dependent upon a difference in circumstances, constitutes no discrimination, within the meaning of the

Constitution, against the importer; and is not, therefore, an
45 attempt at interference with the freedom and equality of interstate commerce. Hinson *vs.* Lott, 8 Wall. 148.

The principal criticism by complainant's counsel is predicated of sections 5 and 13 of the statute. A reasonable construction of sec. 5 does not justify the contention that it has any application to the instance of beer manufactured outside the State and shipped through the State for sale in another State; nor to such shipment into the State to a warehouse—of the nature of an entrepot—of the shipper, *used merely for convenience or eligibility* for distribution beyond the limits of the State. The supreme court of the State, in State *vs.* Bixman, *supra*, p. 40, clearly enough indicates that the State places no such construction on the act. The court said:

"The law exacts that every brewer, foreign as well as domestic, who sells in the State, shall pay the same inspection fees or price for the privilege of selling in this State, and shall submit to the same inspection; on the other hand, the law exempts all brewers who export from paying these fees."

The language of section 5 is, "Every person, persons or corporations who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in this State shall, upon receipt of same, and before offering for sale, notify the inspector, etc." The clear intendment of this is that it has reference alone to beer received in the State for sale here. Where the language of a statute is such as to be reasonably referable to a subject matter within the legal competency of the legislature to regulate, that interpretation should obtain which refers its import to a valid, rather than an invalid act. "Nothing is better settled than that a statute should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion." Lau Ow Bew *vs.* United States, 144 U. S. 47, l. c. 59. This is predicated of the wise rule laid down in Plowden, 205:

"From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend to but some things, and those which generally prohibit all people from doing such an act they have interpreted to permit some people to do it, and those which include every person in the letter, they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the legislature, which they have collected sometimes by considering the cause and necessity of making the act, sometimes by comparing one part of the act with another, and sometimes by foreign circumstances."

46 Does the fact that section 13 of the act exempts the domestic manufacturer from any fee for the inspection of beer to be exported by him outside of the State, create an illegal discrimination against the foreign importer? If the State, in the in-

terest of the public health, requires the domestic exporter to submit his product to inspection by the local inspector prior to the exportation, without fee, how does it concern the foreign manufacturer? The Missouri manufacturer shipping into another State for sale, like the Wisconsin exporter, is subject to the laws of the State where the sale is made, and must submit to such regulations as are imposed by the State where the product is to be consumed. It would be subject to the police power of such State for regulation. After the complainant has shipped his product into the State for sale here, and the same is sold by him, it does not concern him what disposition his vendee may make of it, or what impediments or burdens his vendee may encounter in disposing of it. The inspection fee exacted by the statute being only on beer shipped hither for sale in the State, if the purchaser intends his purchase for sale in another State, he would not be subject to any local inspection fee in Missouri on the article in the original package in transit to another State, or temporarily stored here for the convenience of foreign distribution. It is only when shipped here to become mingled with the common property of the State that it becomes amenable to the police laws of the State. In short, the complainant is in no position to complain of any discrimination as against him by the State until his product shipped hither is subjected to some police regulation or exaction not common to a like domestic product. The allegations of the bill in this respect will be discussed further on.

This brings us to the consideration of the objection, based on section 5 of the act, respecting the requirement that when a consignment is made for sale in this State, the shipper is required to furnish the inspector "with a sworn affidavit, subscribed by an officer authorized to administer oaths from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops or the extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of the same." The making of these affidavits by complainant, it is
47 alleged, costs it annually about one thousand dollars; whereas no such burden is imposed upon the domestic manufacturer. In construing this provision regard must be had to the scheme of the police regulation of the State, which was, as held by the supreme court of the State, to protect the people against the use of unwholesome beer. To this end, all the beer sold for consumption in the State should contain no other substances than those defined by the act. It was competent for the State legislature to devise some reasonable and practicable method of ascertaining and evidencing the fact of a compliance with this requirement. In the case of a domestic manufacturer, as conceded at the hearing, the inspector goes to the brewery and makes his test by "taking a sample of the mash and of the beer that they are fermenting. This method would not, in the slightest manner, interfere with or hinder them in their oper-

ations, and would at the same time enable the inspector to inspect hundreds and thousands of gallons of beer from the one sample; for as the mash is, so must the beer be." It is impracticable for the State to send and maintain an inspector at every outside brewery, to make an inspection and test. Hence, in respect to the foreign shipper, the legislature had recourse to the acceptance from him of an affidavit, evidencing a compliance with the requirement as to the ingredients of the imported article. It would most certainly seem that if this were all, the importer ought not to complain. The chief objection to accepting such *ex parte* evidence of the purity of the imported article might, with great propriety, be made by the consumer. Such evidence might be very unreliable and afford little protection. The State, having no extra-territorial jurisdiction, could not proceed against the nonresident importer for a violation of its penal statute; and, singularly enough, the statute does not undertake to impose any penalty upon the agent or representative of the foreign manufacturer for presenting in this State to the inspector a false affidavit. I suspect that the legislature was more concerned in the matter of obtaining fees, to swell the exchequer of the State, than in the protection of the people who might drink beer. If, however, such affidavit be accepted by the State as sufficient evidence, it certainly ought not to lie in the mouth of the importer to complain that the trouble of making, on a stereotyped form, such perfunctory statement, and the in-
48 considerable fees likely to be paid therefor, enable him to stand on an equal footing with the domestic manufacturer, who is compelled to admit to his premises the inspector to make an actual test of every tub of mash, and to follow it with labels on the receptacles into which it is placed for sale. It seems to me, in this respect, that the law is rather a discrimination in favor of the importer. Law is intended to be a sensible and practicable thing; and, therefore, it recognizes distinctions growing out of different situations; and different rules may be made respecting different classes, where classification is a result arising *ex necessitate rei*. The equality of right exacted by the fourteenth amendment to the Federal Constitution is only that the laws "shall operate on all alike *under the same circumstances*." Clark *vs.* Titusville, 184 U. S. 333.

Further objection to said section 5, in this connection, is the contention, that in addition to such affidavit the inspector is required to make an inspection of each package containing beer; that such inspection implies a physical opening of at least one bottle in each package containing beer in bottles, and when in kegs or barrels the opening and taking therefrom a sufficient quantity to sample, which would involve the destruction and loss of the article so opened, as it is a well known fact that beer when thus opened becomes stale and unsalable. Reading the phrase in section 5, "upon receipt of said affidavit the inspector shall inspect and label the packages containing said beer or malt liquor," in connection with sections 7 and 8, which impose upon the inspector the duty of causing to be inspected

all beer or other malt liquors brewed, or manufactured, or sold in this State, to determine its ingredients, gives color to the contention that a physical inspection of the imported beer for sale in the State, in the mind of the legislature, is as much required as in the case of the domestic manufacturer. It must be conceded that the supreme court of the State, in passing upon said section 7, in respect of the domestic manufacturer, was placed in distress in upholding the validity of the statute, to avoid a construction that seemingly required a physical opening of the package after it was put up by the brewer for sale, by holding that it was contemplated that the inspection should be made of the mash or fermented beer at the brewery before it
49 passed into the packages or receptacles for sale. The court felt compelled to resort to this judicial *coup de tat* to avoid the criticism that such mode of instruction involved a physical destruction of a part of the property of the owner, without making any provision for just compensation therefor, and thus taking private property without due process of law; and further to escape following the recognized rule that in determining the validity of a legislative act, the question is, what do its terms authorize to be done under them, rather than what is done under them. But, as already shown, the mode of inspection suggested by the State supreme court respecting the inspection of domestic beer would be quite impracticable in the case of beer manufactured outside of the State. Evidently it was contemplated by the legislature that the phrase "upon the receipt of said affidavits the inspector shall inspect and label the packages" should imply that the inspector is merely to inspect the same thing he labels, *i. e.* the package: that it was intended that the affidavit should take the place of inspecting by test the ingredients of the package, and that the inspection to be made by him is only to see that the packages labeled correspond with those covered by the affidavit. And I doubt not, as stated by defendants' counsel at the hearing, this is the course in fact pursued by the inspector.

Is this construction given by defendants' counsel to this clause of section 5 unreasonable or unnatural? Why should the legislature provide that the importer alone should furnish an affidavit, giving the constituent elements of his product, if that were to be followed up by a physical test, by sample, of each package? The affidavit under such construction could perform no reasonable office. It would be wholly a work of supererogation. A physical inspection by opening the package would not only disclose all that the affidavit gives, but would furnish all the safe guard that the State could want. In construing statutes courts should not exhibit an eagerness to find flaws, nor prefer that hypercritical, technical import of a term which would reduce the statute to a legal absurdity, rather than that which, while giving a sensible office and meaning to the context, will preserve the consistency and efficiency of the law. As said by Mr. Justice Field, in Kirby *vs.* United States 7 Wall. 486:

"All laws should receive a sensible construction. General terms

should be so limited in their application as not to lead to in-
50 justice, oppression, or an absurd consequence. It will, always, therefore, be presumed that the legislature intended exceptions in its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

The bill of complaint does not in terms charge that the inspector has ever attempted to open the imported packages with a view of making an analysis of the contents of a single bottle or cask, or that he threatens to do so. I should not hesitate to interpose by injunction to protect the importer of beer against a rule of inspection which would destroy a valuable part of the shipper's property without just compensation therefor to the owner.

The ultimate position of complainant's counsel is that the State, recognizing the traffic in intoxicating liquors, imported beer stands upon the same footing as any other article, or commodity of merchandise, brought into the State; and the State may not, under the guise of inspection fees as a police regulation, subject it to onerous exactions, bearing no just relation to the expenses attending such inspection. The Supreme Court of the United States has repeatedly said, in discussing the interstate commerce clause of the Constitution, that "the mere fact that an act purports to be an inspection measure is not conclusive upon the court; its purposes and objects must be determined by its natural and reasonable effect. The court is not to be misled by mere pretenses." Scott *vs.* Donald, 165 U. S. 58; State *vs.* Barber, 136 U. S. 313. That court has also said that "a burden imposed by a State upon interstate commerce is not to be maintained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute." Railroad Co. *v.* Husen, 95 U. S. 465.

The case at bar, however, is to be determined in its relations to the act of Congress of 1890 (26 St. at Large, p. 313), known as the Wilson bill, which declares,

"That every fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

Counsel for complainant are in error in asserting that this act has
application alone to States maintaining prohibition laws.
51 Color is given to this contention by certain language employed in the opinion in Scott *vs.* Donald, *supra*. But in the later case of Vance *vs.* Vandercook Company (No. 1), 170 U. S. 438, that language is explained, and its application properly limited. The court said:

"The plain purpose of the act of Congress having been to allow

State regulations to operate upon the sale of original packages of intoxicants coming from other States, it would destroy its obvious meaning to construe it as permitting the State laws to attach to and control the sale only in case the States absolutely forbade sales of liquor, not to apply in case the States determined to restrict or regulate the same. * * * If the purpose of the act had been to allow the State law to govern the sale of the original package only where the sale of all liquor was forbidden, this object could have found ready expression, whilst, on the contrary, the entire context of the act manifests the purpose of Congress to give to the respective States full legislative authority, both for the purpose of prohibition as well as that for regulation and restriction with reference to the sale in original packages of intoxicating liquors brought in from other States. * * * Such a law may forbid entirely the manufacture and sale of intoxicating liquors and be valid. Or it may provide equal regulations for the inspection and sale of all domestic and imported liquors and be valid. But the State cannot, under the congressional legislation referred to, establish a system which, in effect, discriminates between interstate and domestic commerce in commodities to make and use which are admitted to be lawful."

Laws for protecting the people against impure food, adulterated milk and butter, decayed vegetables, and unwholesome ingredients in intoxicating liquors, inhere in the police power of the State. The fact that a large revenue may incidentally result is not fatal to such a law, especially in respect of intoxicants. In the very nature of the case, the amount of the license fee must rest in the sound discretion of the legislative branch of the Government. As said by Mr. Justice Catron, in the license cases, 5 How., 504–599:

"The assumption is, that the police power is not touched by the Constitution, but left to the States, as the Constitution found it. And this conceded; and whenever a thing, from character and condition, is of a description to be regulated by that power of the State, then the regulation may be made by the State, and Congress cannot interfere."

Subject, of course, to the ascertainment by the Federal courts, in a proper case, as to whether or not the thing be within the essential police power of the State.

This character of legislation is bottomed upon the postulate in this country, that the right to sell intoxicants is not a natural right. Hence, it is universally recognized that the State may prohibit entirely its sale within its territory, or it may grant permission to sell under such restrictions and regulations as the law-making department, in its wisdom, may see fit to impose. And so long,
52 under the statute, as the regulation and exaction are free from unequal discrimination against products the subject of interstate commerce, this complaint is without legal grievance.

The large yield to result to the State from the inspection fees, exacted beyond the cost of executing the law, is supported by that eminent jurist Judge Cooley, who said:

"It is proper and reasonable to take into account not only the expense merely of direct regulation, but all the incidental consequences which may be likely to subject the public to cost in consequence of the business licensed. In some cases the incidental consequences are much the most important, and, indeed, are what are principally had in view when the fee is decided upon. * * * The business of selling intoxicating liquors has a powerful tendency to increase crime and pauperism. It renders a large force of peace officers essential, and it adds to the expense of the courts, and of nearly all branches of civil administration. It cannot be questioned, therefore, if it is to be licensed by the public authorities, that it is legitimate and proper to take into account all the probable consequences, or that the payment to be exacted should be sufficient to cover all the incidental expenses to which the public are likely to be put by means of the business being carried on." Cooley on Taxation, 2nd ed. p. 599; State *vs.* Luddington, 33 Wis. 107.

It is upon this theory that high license laws of the State are upheld.

"Such laws are regarded 'as police regulations, established by the legislature for the prevention of intemperance, pauperism and crime, and for the abatement of nuisances,' and are not regarded as an exercise of the taxing power. 'Pursuits that are pernicious and detrimental to public morals may be prohibited altogether, or licensed for a compensation to the public.' It does not follow because the license fee is large, or because it may become a part of the public revenue that it is, therefore, a tax." State *ex rel. vs.* Hudson, 78 Mo. 302, *l. c.* 304–305.

It must be held, however, that the demurrer to the bill is too broad. In the second subdivision of the 11th paragraph of the bill it is alleged,

"That in the usual course of its (complainant's) business in such commerce it is compelled to and does maintain large warehouses and storerooms in the State of Missouri and is compelled to and does maintain an office therein as a necessary adjunct to the proper and economical conduct of its said business and commerce; that of the beer imported annually into the State of Missouri by your orator, a great protion, to wit: not less than seventy-five hundred barrels of 31 gallons each, of the aggregate value of fifty thousand dollars ($50,000.00) is intended for export to other States. That in the due course and conduct of its said business, such beer is unloaded by your orator from the cars in which it has been imported into the State and is stored, in unbroken bulk, and in the original packages in which the same was imported, in the storehouses and warerooms of your orator, in the State of Missouri. That sales of such imports, in the unbroken and original packages in which imported, are there-fter effected by your orator, in the State of Missouri, to persons resident without and non-citizens of the State of Missouri, for export by your orator therefrom, and for delivery by your orator, in such original packages to the purchasers thereof at agreed points in other

States and countries; that such imports of your orator, when
53 so sold, are thereafter exported from the State of Missouri by your orator, as aforesaid, and no part or portion thereof is consumed within the State; that upon such imports so thereafter by your orator sold for export and so exported by your orator, your orator is compelled to pay and under protest, and in order to protect its property and rights from greater injury, does pay, to the State of Missouri, the same being exacted of your orator under the alleged authority of said enactment of the General Assembly, the sum of 39 cents per barrel as a tax, such payments so compelled to be made by your orator, amounting in *in* the aggregate to three thousand dollars ($3,000.), or thereabouts annually; that if such tax be not paid by your orator to said State, your orator's servants and agents will be apprehended, fined and imprisoned as by said alleged enactment provided, to the great and irreparable injury of the business and property rights of your orator, and your orator's general license to carry on its business within the State will be revoked and annulled and no other license will be issued to it within a period of two years; in which event your orator's business within the State of Missouri will be wholly destroyed and its property rights irreparably injured, and the defendants, and each of them, threaten to enforce against your orator, in the courts of the State, all of the penalties prescribed by said enactment for a breach of the provisions thereof should your orator refuse to pay such assessments, charges and taxes."

These facts stand admitted by the demurrer. As already maintained, the 5th section of the legislative act in question was intended to apply only to beer or malt liquors shipped into the State for use here. The right of the State to pass inspection laws, recognized in article 1, sec. 10, of the Constitution, in the very nature of the reservation, is limited to the domestic products of the State, either for exportation or home consumption, or such as come into the State subject to the police power of regulation. "They act upon the subject before it becomes an article of foreign commerce among the States, and prepare it for that purpose." Bowman *vs.* Chicago, etc., Railway Co., 125 U. S. 488; Gibbons *vs.* Ogden, 9 Wheat. 203. It has no reference to and cannot touch foreign manufactures which become subjects of interstate commerce in passing through the States, or which may be temporarily stored here, for distribution in the original bulk or package *in transitu* to another State. In the recent case of Attorney General *ex rel. vs.* Great Western Tea & Coffee Company of St. Louis, decided by the supreme court of this State and not yet published, respecting the right of the company importing baking powder into the State, it was held that the statute of this State eliminating from the manufactured article alum as an ingredient is not applicable to the foreign manufactured powder imported into the State, while the act is valid as to the article manufactured in the State. This distinction evidently rests upon the proposition that such food product,

being a natural subject of interstate commerce, is not subject to such police regulation of the State. I assume this
54 to be the distinction drawn by the court between the baking powder case and the beer case heretofore decided by that court, though I have not seen the full report of the recent case. The police power, dependent in the case at bar for its exertion upon the idea that it is essential for the protection of the health and good of the people of the State, its exercise can have no foundation of right, even as applied to intoxicants, (to deal in which is not a natural right) not manufactured in the State, and not to be consumed or used in the State. To subject the foreign product in its passage through the State to any exaction by the State, either by way of taxation or inspection fees, would be a direct interference with interstate commerce. So that if complainant's beer or malt liquor not shipped into this State for sale is subject to the conditions and annoyances to the complainant, or its agents or servants, in the manner alleged in that part of the bill above quoted, it invites and justifies the interposition of the injunctive process of the court. This jurisdiction is supported by the recent decision of the court of appeals of this circuit in the case of City of Hutchinson *et al. vs.* Beckham *et al.*, 118 Fed. 399. In that case an ordinance of the city of Hutchinson, Kansas, was assailed on ground that it undertook to impose a license tax upon complainants' goods shipped from Missouri, and stored for distribution in complainants' warehouse in the city of Hutchinson, when no like exaction was made of other merchants engaged in local business, or of those who did maintain their principal office there, etc. The ordinance imposed fines, and exposed the offender to arrest and imprisonment. It was alleged that such criminal proceedings had been instituted, and the city threatened to continue such prosecutions, to the great annoyance, and injury to complainants in the pursuit of their rightful business as importers of interstate commerce. Thayer, circuit judge, said:

"Now, conceding that the validity of the ordinance might have been tried in any one of the criminal prosecutions thus brought by the city, yet, as the right of appeal existed from any judgment which might have been rendered therein, it is apparent that months, and possibly that some years, might have elapsed before the invalidity of the ordinance would have been definitely established, and that in the meantime the complainants might and probably would have been compelled to defend a multitude of suits, and submit to daily interruptions of their business, which would have proven to be very annoying, and probably disastrous. In such a case,
55 the rule that a suit in equity will not lie to restrain the collection of an illegal tax, merely on the ground of its illegality, does not apply, because circumstances are alleged which show that if left to their remedy at law the complainants would probably be subjected to numerous prosecutions, besides sustaining great and irreparable loss in the prosecution of their business.

When, in addition to the fact that an illegal tax has been imposed, it further appears that the persons or corporations upon whom it is imposed will be called upon to defend a multitude of suits, or that they will sustain great injury if the State or municipality is left free to enforce the tax by the usual remedies, courts of equity never hesitate to assume jurisdiction and grant injunctions against those who are seeking to enforce the collection of the tax if it appears to be clearly illegal." Dows vs. City of Chicago, 11 Wall. 108, 110, 20 L. Ed. 65; Railway Company vs. Cheyenne, 113 U. S. 516, 525, 5 Sup. Ct. 601, 28 L. Ed. 1098; City of Ogden vs. Armstrong, 168 U. S. 224, 239, 240, 18 Sup. Ct. 224, 42 L. Ed. 444; Heywood vs. City of Buffalo, 14 N. Y. 534.

As the demurrer goes to the whole of the bill, if any part of the bill be good, the demurrer must be overruled. As the defendants will have *to* leave to answer, they can put in issue said allegations, if untrue, and any other matters of fact alleged in the bill they may deem proper to controvert.

It results that the demurrer must be overruled.

56 And afterwards to-wit: on the 2nd day of March A. D. 1903 there was filed in the office of the clerk of said court the joint and several answer of defendants to amended bill of complainant, in words and figures following to-wit:

In the Circuit Court of the United States for the State of Missouri, Western District, St. Joseph Division.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants. } In Equity.

The Joint and Several Answer of the Above Named Defendants to the Amended Bill of Complaint of the Above Named Complainant.

In answer to said bill we, G. Y. Crenshaw and John J. Downey, says as follows:

First. We admit that complainant is and was at all the times mentioned in said bill a corporation duly incorporated, existing and doing business under and by virtue of the laws of the State of Wisconsin; is a citizen of the State of Wisconsin, domiciled therein, having its principal place of business in the city of Milwaukee in said State; that defendant G. Y. Crenshaw is a citizen of the State of Missouri, residing in the city of St. Louis in said State, and that the defendant John J. Downey is a citizen of the State of Missouri, resident at the city of St. Joseph in said State, and within the St. Joseph division of said western district.

Second. We admit that the business of vending and dealing in

beer and other malt liquors now is and was at all times hereinafter mentioned in the State of Missouri, and by the laws of said State, recognized as legitimate trade and commerce, and the manufacture and sale of beer and other malt liquors, and the importation into said State of beer and other malt liquors, and the sale of the beer and other malt liquors so imported, and the exportation from the State of Missouri of liquors imported into and thereafter sold within and exported from said State is and was as aforesaid permitted in and authorized by the laws of said State, and was and is recognized as a legitimate and lawful trade or calling, but said business is and was subject to certain regulations and requirements provided by the laws of said State, and these requirements must be complied
57 with before it is lawful to sell beer and other malt liquors for consumption within said State.

Third. We admit that complainant is and was at all the times referred to in the bill, engaged in the business of brewing, manufacturing, and selling beer in the State of Wisconsin, and also in the business of importing into and selling in the State of Missouri beer manufactured by it in the State of Wisconsin. We do not know, and therefore cannot state of our own knowledge whether the complainant is engaged in selling beer in other States of the United States, or whether it manufactures in the State of Wisconsin ten different kinds or grades of beer and malt liquors, or whether each kind or grade is seperately manufactured or made or requires seperate treatment, and we have no knowledge or information sufficient to form a belief in regard thereto. We admit that the complainant annually imports into and sells in the State of Missouri a large quantity of beer and other malt liquors, but do not know, and therefore cannot state of our own knowledge, whether it annually imports into the State as much as fifteen thousand barrels, of thirty-one gallons each, or whether the same is of the aggregate value of not less than one hundred thousand dollars, but we do not believe from our information that the amount shipped by complainant is that much.

Fourth. We admit that at the regular session of the General Assembly of the State of Missouri, in the year 1899, an act or statute was passed entitled "An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors manufactured and sold in the State." We admit that said act is correctly copied in the bill of complaint, and that it was duly approved on the 4th day of May, 1899, by the governor of said State, and was published in the manner provided by law for the publication of acts of the General Assembly, but we deny that said statute was enacted under the mere pretense of regulating the trade in beer and other malt liquors and only in reality for the purpose of increasing the general revenue of the State. Section eight of said act, as set out in the bill of complaint, was amended by the General Assembly of the State of Missouri at the regular

session of said General Assembly in the year 1901, by an act entitled, "An act to amend section 7891 of article IV of chapter 117 of the Revised Statutes of 1899, entitled "Inspection of beer," and to fix the fees to be paid therefor," and said section eight, which fixed the inspection fees as amended by the General Assembly of 1901, which amendment was approved by the governor of said State on the 16th day of April, 1901, and then and there became
58 a law of said State, is in words and figures as follows, to-wit:

"The inspector shall be entitled to receive for inspecting and guaging one-half a cent for each gallon contained in each package, and one cent for labeling each package. All fees received by the inspector shall be paid into the State treasury. The word "package," as used in this article, shall be construed to mean any vessel of any kind other that pint and quart bottles in which any beer or malt liquor may be placed for sale containing eight gallons or less; when said beer or malt liquors are placed in pint or quart bottles, a package, as used in this article, shall be construed to mean not to exceed forty eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be placed in suitable cases containing said number and size of bottles for stamping by said State inspector; and when said beer or malt liquor shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean each eight gallons or fractional part thereof so contained in said vessel."

Fifth. We admit that G. Y. Crenshaw was appointed and is now acting under said act of the legislature, and that John J. Downey was thereafter, in accordance with said act, appointed deputy inspector of beer and malt liquors of said State, and that said parties have duly qualified, and that we now claim to be entitled to act as such inspector and deputy inspector, and entitled to discharge the duties of our respective offices, and claim to be authorized and entitled to enforce the provisions of said act, as far as the beer inspector and deputy beer inspector are authorized so to do by the terms and provisions of said enactment of the General Assembly, and we admit that we publicly stated and announced our intention of enforcing the provisions of said act, and that we are enforcing the provisions thereof, but deny that the enforcement of the same is a gr-evious and continued injury, or is any injury to the complainant in its business other than the mere fact that complainant is required to pay for the inspection fees upon the beer and malt liquors which it sells for consumption in the State of Missouri.

Sixth. We admit that the persons and corporations named in the sixth paragraph of the bill are engaged in the manufacture of beer in the State of Missouri. We are not able to state of our own knowledge whether the amount of beer manufactured by said parties and the value thereof is correctly stated in said sixth paragraph of said bill, and have no information upon that subject sufficient to form a belief.

59 Seventh. We admit that there are other persons, firms and corporations engaged in manufacturing beer in other States who annually ship and sell beer so manufactured in the State of Missouri. We deny, however, that the amount stated in the seventh paragraph of the bill of complaint is shipped into, said State, or that the value thereof is as stated therein.

We also admit that beer is shipped from foreign countries into said State of Missouri for sale, but we are unable to state the exact amount thereof or the exact value of said shipments.

Eight. We admit that beer, of whatever cereals it may be manufactured, for the purpose of sale and consumption, must be inclosed in tight packages of glass or wood, and when prepared for sale by enclosure in such tight packages, the packages thereafter cannot be opened without injury to the contents; that such packages are never opened except for immediate consumption; that to open the same otherwise than for immediate consumption of the contents so effects the beer as to render it stale, flat and unpalatable and sour and a complete loss.

We admit that the average price of beer manufactured and sold in the State of Missouri, exclusive of the United States revenue stamps, is five dollars per barrel of thirty-one gallons, and that the average price per barrel of like capacity of beer manufactured out of and imported into said State for sale is six dollars and fifty cents.

Ninth. We do not know of our own knowledge the exact number of barrels, or the exact value of the beer manufactured in the State of Missouri, that are shipped to other States, and have no knowledge or information thereof sufficient to form a belief. We admit that a large quantity of beer is so shipped out of this State for sale in other States. We do not know and have no knowledge or information sufficient to form a belief whether, that of the beer and malt liquors manufactured out of and imported into this State from other States and foreign countries, there is exported from this State in the original, unbroken packages not less than four hundred thousand barrels, of thirty-one gallons each, or whether the beer so exported is of the value of two millions six hundred thousand dollars. We do not know, and have no knowledge or information sufficient to form a belief as to the amount of beer that is brought into this State and then shipped into other States in the original packages, nor have we knowledge or information sufficient to form a belief as to the value of such beer.

Tenth. We deny that the act of the General Assembly of the
60 State of Missouri, set out in said bill, levies a tax upon the beer, or that the inspection fee provided in said act is a tax upon such property. We admit that the inspection fees collected under said act are greater than the salaries of the inspector and deputy inspectors and the expenses of making such inspection. We deny that the inspection fees collected under said act amount to not less than five hundred and fifty thousand dollars annually, or that

such fees are five hundred thousand dollars in excess of the cost of inspection, and we deny that the fees collected under said act for the inspection of beer and malt liquors manufactured out of and imported into this State from other States and foreign countries exceeds annually by the sum of sixty thousand dollars the cost of inspecting such beer imported from such other States and foreign countries, or that the excess over the cost of inspection is by the terms of the act a special tax upon beer sold in the State of Missouri and upon beer imported into the State from other States and foreign countries and sold in said State, or upon beer and malt liquors which being so imported have not yet by sale become amalgamated into the general mass of the property of said State, or is levied for the purpose of replenishing or enriching the general revenues of the State.

Eleventh. We deny that the act of the General Assembly set out in said bill is unconstitutional, inoperative and void, or that it is against common right and of no binding force, validity or effect, for all or any of the reasons set out in sub-divisions one, two, three, four or five of paragraph eleven of the bill of complaint, and we deny that the act violates section 1 of the 14th amendment to the Constitution of the United States, or section 2 of article IV of the Constitution of the United States, or that it is in conflict with any of the provisions of the Constitution of the United States or the amendments thereto; but we aver that said act of the General Assembly of the State of Missouri is a valid enactment, and that it was within the power of the General Assembly of said State to adopt said law and within the legal authority of said *said* State, under the Constitution of the United States, to invest these defendants with the power to make the inspection of beer and malt liquors as required by the terms of said act. We deny that said act, by its terms or provisions, imposes upon the person or corporation manufacturing beer in other States and bringing the same into the State of Missouri for sale here, any different or greater inspection fee than is imposed by the terms of said act upon the manufacture-'s of beer in this State, or
61 that said act makes any discrimination between non-resident and resident manufacturers of beer. We deny that said act, by its terms or under any reasonable construction thereof, requires the complainant to pay the inspection fee required by the eight- section thereof, as amended by the General Assembly of 1901, upon beer shipped by complainant into the State of Missouri to be reshipped from its warehouse in this State for sale in other States.

We have no knowledge or information sufficient to form a belief as to the quantity or value of the beer that is shipped annually by the complainant into the State of Missouri which is intended for export to other States and is sold and exported into other States, and we cannot say, either from our own knowledge or from our information or belief whether the beer so shipped into this State by the complainant annually, but not intended for sale here, is not less than seventy five hundred barrels of thirty one gallons

each, or whether it aggregates in value fifty thousand dollars, or whether in fact any such beer is shipped into the State of Missouri and intended by complainant to be exported therefrom. We do not know of our own knowledge or belief whether such beer is unloaded from the cars in which it has been imported into the State of Missouri and is stored in unbroken bulk and in the original packages in which the same was imported in the storehouse or warehouse of the complainant in the State of Missouri, nor do we know, nor have we knowledge sufficient to form a belief concerning any sales of such imports in unbroken and original packages to persons resident without and non-citizens of the State of Missouri, to be delivered in such original packages to the purchasers thereof at agreed points in other States and countries.

We deny that complainant is compelled to pay, or that it ever has paid, or that it has ever been required or asked to pay any inspection fees upon any of its beer not intended for sale and consumption in this State. We deny that we have ever attempted to inspect, or claimed the right to inspect and label any of complainant's beer not intended for sale and consumption in the State of Missouri. We deny that complainant has ever been required to have inspected any beer which was shipped into the State of Missouri, stored in any of complainant's warehouses in said State, and intended for export in the original packages into other States, or to pay any inspection fees on account thereof. We deny that in order to protect its property or otherwise the complainant does pay to the State of Missouri the sum of thirty nine cents per barrel, or any other sum, as a tax upon beer not intended for consumption
62 in said State of Missouri, or that it has ever paid, or been asked to pay, or compelled to pay any sum or any amount whatever upon any of its beer which was stored in its warehouses in the State of Missouri and subsequently exported from said State for sale and consumption elsewhere.

We deny that we or either of us, at any time or in any manner, requested the complainant to submit to an inspection under the act of the General Assembly hereinbefore referred to, any of its beer not intended for sale and consumption in the State of Missouri, or to pay any inspection fees upon beer only temporarily in the State and to be exported from the State for sale elsewhere, or that any such inspection fees have been paid to the defendants or collected under their authority. We have only inspected and labeled beer which was represented to us by the complainant as intended for sale and consumption in the State of Missouri, and which we were requested to inspect and label by the complainant.

We deny that the act of the General Assembly of the State of Missouri, by its terms or provisions, authorizes or requires the inspection and labeling of packages containing beer not intended for sale and consumption in this State, or that defendants have ever so construed the act as to require the payment of an inspection fee upon beer shipped into this State and stored temporarily therein and in-

tended for reshipment into other States and for sale outside of the limits of this State.

We deny that said act of May 4th, 1899, is repugnant to section 8 of article 1 of the Constitution of the United States, or to section 2 of article IV of said Constitution, for the reasons stated in the fifth sub-division of paragraph 11 of said bill of complaint, or for any other reason, or that said act makes any discrimination against foreign manufactures of beer and malt liquors or imposes any improper restraint upon interstate commerce. We deny that the act by its terms requires the opening of the packages containing beer brought into this State, for the purpose of inspecting the same, or that these defendants have ever opened or attempted to open any of the packages containing such beer.

Twelfth. We deny that we have ever attempted to enforce the act of the General Assembly aforesaid other than by simply inspecting the beer submitted to us by complainant for the purpose of inspection under the terms of the said act. We admit that the principal place of business of the complainant is in the city of Milwaukee, in the State of Wisconsin, and that it owns a depot in Kansas City, Missouri; that it has no brewery in the State of Missouri, and that its business in this State consists solely in maintaining its
63 depot and selling its products shipped into this State.

Thirteenth. We do not know and cannot state of our own knowledge and belief the value of the property used by complainant in the conduct of its business in the State of Missouri, or the revenue and profit received therefrom. We deny that unless the relief prayed for in the bill is granted, any or all of said property will be rendered worthless or of no value, or that complainant's business will be destroyed or in any wise injured, or that its income or profits will be lost to it.

Fourteenth. We deny that the act of the General Assembly of the State of Missouri hereinbefore referred to requires the opening of complainant's packages containing its beer, or that defendants have ever at any time opened or attempted to open any of said packages for the purpose of inspecting the beer contained therein, but say that the affidavit referred to in said act is required by the terms thereof to be accepted in lieu of an inspection of the beer, and that defendants are only required to inspect and label the packages to which the affidavit applies. We deny that the act of the General Assembly of the State aforesaid interferes in any way with the legal rights of complainant, or that the complainant has the right to sell and dispose of intoxicating liquors in the State of Missouri without complying with the terms and provisions of said act. We deny that defendants or either of them, have instituted or caused to be instituted in the State of Missouri a large number of criminal prosecutions, or that they or either of them have instituted any criminal prosecutions for violation of said acts of the General Assembly, or that they have threatened to or are about to institute criminal prosecutions against complainant or any of its customers or other persons, and

we deny that the duty is devolved upon us by the terms of said act to institute such criminal prosecutions. We admit that a number of criminal prosecutions have been instituted in some of the counties of this State, and were pending at the time the original bill of complaint was filed in this cause, but that all of said prosecutions have been dismissed and that there are no prosecutions under said act now pending, so far as we know or have any information or belief, in any of the courts of this State.

We deny that the enforcement of the act will produce irreparable injury to the business of complainant, or that it is without adequate remedy at law, and we submit that we have the legal right to perform the duties devolving upon us under the terms of the act of the General Assembly set out in the bill of complaint, and that
64 complainant is not entitled to an injunction to restrain us from so doing, and defendants pray that said bill be dismissed, and that they have their reasonable costs in this behalf.

G. Y. CRENSHAW.
JNO. J. DOWNEY.

E. C. CROW,
W. M. WILLIAMS,
Solicitors for Defendants.

And afterwards to-wit: on the 14th day of March A. D., 1903 there was filed in the office of the clerk of the said circuit court, for the St. Joseph division of the western district of Missouri plaintiff's replication to defendants amended bill of complaint, in words and figures as follows:

In the Circuit Court of the United States for the State of Missouri, St. Joseph Division, Western District of Missouri.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

The Replication of Pabst Brewing Company to Defendants' Answer.

This replicant, saving and reserving to itself now and at all times hereinafter all and all manner of benefits and advantages of exception which may be had and taken to the manifold insufficiencies of said answer, for replication thereto say that it will aver, maintain and prove its bill of complaint to be true, certain and sufficient in the law to be answered unto; and that said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by replicant without this; that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true all which

matters and things the replicant is and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

HARKLESS, O'GRADY & CRYSLER &
F. C. DOWNEY, *Solicitors for Complainant.*

65 And afterwards, to wit: on the 1st day of April A. D., 1903, there was filed in the office of the clerk of said circuit court an agreed statement of facts, in the above cause, which is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the State of Missouri, Western District, St. Joseph Division.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants. } In Equity.

Agreed Statement of Facts.

It is stipulated that this cause shall be submitted to the court upon this agreed statement of facts:

1st. That complainant is and was at the time of the institution of this suit a corporation duly created under the laws of the State of Wisconsin, and is and was at said times a citizen of said State, and that its principal place of business is in the city of Milwaukee, in said State of Wisconsin.

2nd. That defendant Crenshaw is a citizen of the State of Missouri, resident at the city of St. Louis, and defendant John J. Downey is a citizen of the State of Missouri, resident at St. Joseph, in said State, and within the St. Joseph division of the western district of said State.

3rd. That complainant was at the times mentioned in the bill, and still is, engaged in shipping into and selling in the State of
66 Missouri and other States, beer manufactured by it in the State of Wisconsin; that it manufactures in the State of Wisconsin ten different kinds or grades of beer and malt liquors, each kind or grade being separately made or manufactured and requiring special treatment; that it annually transports into and sells in the State of Missouri fifteen thousand barrels of beer and other malt liquors, of thirty one gallons to the barrel, of the aggregate value of one hundred thousand dollars; that such shipments consist of every kind and grade of beer and other malt liquors so manufactured by it.

4th. That the General Assembly of the State of Missouri enacted a statute at the regular session of said assembly in the year 1899, in words and figures as follows, to-wit:

Inspection—Beer.

"An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors manufactured and sold in this State.

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"SECTION 1. There is hereby created the office of beer inspector which shall be filled by appointment by the governor by and with the consent of the senate within thirty days after the taking effect of this act, and inspector of beer and malt products, who shall serve for a term of four years and until his successor is duly appointed and qualified. He shall be an expert beer brewer and a citizen of the United States and of this State for more than two years next prior to his appointment. He shall give a bond in the sum of twenty-five thousand dollars, to be approved by the governor, for the faithful performance of the duties of his office.

SECTION 2. Said inspector shall, with the approval of the governor, appoint such deputies as may be required to carry out the provisions of this act, not to exceed four in number, and such clerical help as may be necessary. Said deputies shall each receive for their services the sum of fifteen hundred dollars per annum, all salaries and expenses to be paid out of the sums of money now, or that may hereafter be, appropriated for said purpose.

SECTION 3. Every person, persons or corporation who shall erect or keep a brewery for the manufacture or brewing of beer or other malt products within this State, for the purpose of offering the same for sale, shall cause the same to be inspected by said State inspector.

SECTION 4. No person, persons or corporation, engaged in the brewing or manufacture of beer or other malt liquors, shall use any substance, material or chemical in the manufacture or brewing of beer or other malt liquors, other than pure hops or pure extract of hops, or pure barley, malt or wholesome yeast, or rice.

SEC. 5. Every person, persons or corporation who shall receive for sale or offer for sale any beer or other malt liquors other
67 than those manufactured in this State, shall, upon receipt of same, and before offering for sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops, or the extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of the same; upon receipt of said affidavit, the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beer and malt liquors in this State.

SECTION 6. The inspector appointed under this act shall provide himself with an office, and shall record on books kept for that purpose the names and places of business of all persons engaged in the manufacture, brewing and sale of beer and malt liquors. He shall keep a record of all beer and malt liquors manufactured, brewed or sold and the amount produced by each brewer or manufacturer, or sold by dealer. He shall keep a record of all fees collected and all expenditures incurred, and shall make a full and complete report of the same to the governor upon the first day of each year.

SECTION 7. It shall be the duty of each inspector to cause to be inspected all beer or other malt liquors brewed or manufactured or sold in this State, and if he shall find that such beer or other malt liquor has been made from pure hops or the pure extract of hops, or of pure barley, malt or wholesome yeast, or rice, to place upon the package containing said beer or malt liquor his label, certifying that the same has been inspected and made from wholesome ingredients.

SECTION 7*a*. It shall be the duty of the State treasurer upon the taking effect of this act to provide suitable and inimitable State certificates and labels for this inspection, gauging and labelling, having on each proper places for countersigning by the State treasurer and inspector, and shall safely keep the same together with the plates used in making them, when not in actual use. The State treasurer shall from time to time, upon demand, deliver the aforesaid labels to the inspector, taking his receipt therefor, and shall charge said inspector with the same; and shall from time to time as said inspector makes returns of moneys collected in the course of his inspection credit said inspector's account with such sums, and shall keep a true and correct book account of his dealings with said inspector.

SECTION 7*b*. It shall be unlawful for any person to attempt to make or make, to attempt to sell or sell, or attempt to use or use any of the certificates or labels or both provided for by this act, or imitations thereof, except such persons as by law are allowed to make, sell and use the same, and any person so offending shall be deemed guilty of a felony, and, upon conviction, be punished by imprisonment in the penitentiary for a term not to exceed five years.

SECTION 8. The inspector shall be entitled to receive for inspection and gauging one cent for each gallon contained in each package, and two cents for labeling each package. All fees received by the inspector shall be paid into the State treasury. The word package, as used in this act, shall be construed to mean any vessel of any kind other than pint and quart bottles in which any beer or malt liquor may be placed for sale, containing eight gallons or less; when said beer or malt liquors are placed in pint or quart bottles, a package, as used in this act, shall be construed to mean not to exceed forty-eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be placed in suitable cases containing said number and size of bottles,

for inspection and stamping by said State inspector; and
68 when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean each eight gallons or fractional part thereof so contained in said vessel.

SECTION 9. The expense of said office, including the salaries of the inspector and his deputies, shall be paid monthly out of the amount appropriated by law from the general revenue fund on warrants drawn by the State auditor on vouchers approved by the inspector, and all fees received by the inspector under this act shall, on or before the last day of each month, be paid into the State treasury by said inspector, and shall be placed to the credit of the general revenue fund.

SECTION 10. Any person who shall sell any beer or malt liquor within this State which has not been inspected according to the provisions of this act, or contained in packages which shall not have upon them the certificate of the State inspector, or any person — shall fail to destroy said certificate or label after the contents of said package are disposed of, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period of not less than six months, and in addition thereto shall have his license or other authority, giving him the right to manufacture or sell said liquors in this State revoked, and shall not again receive any such license or other authority for a period of two years thereafter.

SECTION 11. If any inspector shall fail to perform any of the duties imposed upon him by this act, or shall in any manner violate any of the provisions thereof, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days and by a fine not exceeding one thousand dollars, and if any said inspector shall fail to faithfully perform the duties enjoined upon him by this act he may be removed from office by the governor.

SECTION 12. All prosecutions for fines and penalties under the provisions of this act shall be either by indictment or information in any court of competent jurisdiction, and when collected shall be paid one-fourth to the informer and three-fourths into the fund for the construction of public roads and highways in the county in which said offense may have been committed and the prosecution begun.

SECTION 13. All beer and other malt liquors manufactured in this State and exported outside of the State for sale, shall be inspected as other liquors designated in this act, but said inspection shall be free of cost to the manufacturer.

SECTION 13*a*. Every railroad, express or transportation company, shall when requested, furnish to the inspector a duplicate bill of lading or receipt showing the name of the consignor and consignee, date, place received, destination and quantity of beer or malt liquors received by them for shipment to any point within this State. Upon

failure to comply with the provisions herein, said railroad, express or transportation company shall forfeit and pay to the State of Missouri the sum of fifty dollars for each and every failure, to be recovered in any court of competent jurisdiction. The inspector herein provided for, is hereby authorized and empowered to sue in his own name at the relation and to the use of the State. The penalties collected shall be paid into the State treasury.

SECTION 14. There is hereby appropriated out of the State treasury, chargeable to the general revenue fund, for the years 1899 and 1900, for the pay of the inspector, six thousand dollars; for the pay of four deputies, twelve thousand dollars; for rent, stationery, fuel, printing, and such other things as may be necessary for the
69 transaction of the business of said inspector, the sum of six thousand dollars.

Approved May 4, 1899.

That said act was on the 4th day of May, 1899, approved by the governor of said State, and thereafter published in the manner provided by law for the approval and publication of the acts of the said General Assembly.

5th. That at the regular session of the General Assembly of the State of Missouri in the year 1901, an amendment to the eighth section of said act above copied was enacted by the legislature of the State of Missouri, and which said amendatory act is in words and figures as follows, to-wit:

"An act to amend section 7691 of article IV of chapter 117 of the Revised Statutes of 1899, entitled "Inspection of beer," and to fix the fees to be paid therefor.

SECTION 8. "The inspector shall be entitled to receive for inspecting and gauging one-half a cent for each gallon contained in each package, and one cent for labelling each package. All fees received by the inspector shall be paid into the State treasury. The word "package," as used in this article, shall be construed to mean any vessel of any kind other than pint and quart bottles in which any beer or malt liquor may be placed for sale containing eight gallons or less; when said beer or malt are placed in pint or quart bottles, a package, as used in this article, shall be construed to mean not to exceed forty eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be placed in suitable cases containing said number and size of bottles for stamping by said State inspector; and when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean eight gallons or fractional part thereof so contained in said vessel."

That the same was duly approved by the governor of the
70 State of Missouri and promulgated as a statute of said State on the 16th day of April, 1901.

6th. That defendant Crenshaw was appointed by the governor of the State of Missouri inspector of beer and malt liquors under the provisions of said act, and defendant John J. Downey was appointed by said Crenshaw, with the approval of the governor of the State of Missouri, deputy inspector of beer and malt liquors of the State of Missouri; that defendants duly qualified as required by the terms of said act and the constitution of the State, and that at the time this suit was instituted, and long prior thereto, they claimed to be entitled to act as such beer inspector and deputy beer inspector, and to be entitled to discharge the duties of their respective offices, and claimed then and still claim to be authorized and entitled to enforce and effectuate the provisions of the acts of the legislature above copied, and that they have announced and stated their intention of enforcing the provisions of said act, and are enforcing the same and threaten to continue enforcing the provisions thereof against the complainant and all other persons coming within its terms, so far as the enforcement thereof devolves upon them as beer inspector and deputy beer inspector.

7th. That the American Brewing Company, the Consumers Brewing Company, the Home Brewing Company, Anheuser-Busch Brewing Company, Louis Ebert, the St. Louis Brewing Association, the Wm. J. Lemp Brewing Company, the Ferdinand Heim Brewing Company, Rochester Brewing Company, G. Muehlebach Brewing Company, Jacob Moerschel, Charles Schibi, the Ste. Genevieve Brewing & Lighting Association, the M. K. Goetz Brewing Company, John Lester, the St. Joseph Brewing Company, the Moerschel Brewing Company, the Springfield Brewing Company, John B. Busch, the Western Brewing Company, the Cape Brewing & Ice Company, Herl-Redlin Brewing Company, Elizabeth Reidel, Hugo Kropp, the Capital Brewing Company and Caspar Ludwig are engaged in the manufacture and sale of beer in the State of Missouri; that
71 they manufacture annually within the State of Missouri approximately 2,250,000 barrels of beer, of 31 gallons each, of the aggregate value of $12,250,000, of which *they* amount they sell in the State of Missouri approximately 1,275,000 barrels, of 31 gallons each, of the aggregate value of about $6,375,000.

8th. That in addition to the complainant and the persons, firms and corporations just named, there are other persons, firms and corporations engaged in the manufacture of beer in other States, including the States of Illinois and Wisconsin, who annually ship into and sell in the State of Missouri, of the beer manufactured in said other States, not less than 165,000 barrels, of 31 gallons each, of the aggregate value of $10,725,000, and that there are large quantities of ale shipped into the *the* State of Missouri from other States in the Union. That there is also imported into the State of Missouri, by various persons, firms and corporations engaged in the sale of beer, large quantities of beer manufactured in foreign countries, and especially beer from Germany and ale from England, and that the aggregate of such additional shipments of beer and ale imported

from such foreign countries and sold in this State, amounts annually to 1500 barrels, or 31 gallons each, of the aggregate value of $10,000.

9th. That beer, whatever cereals may be used in its manufacture, must for the purposes of sale and consumption be enclosed in tight packages of glass or wood, and when so prepared for sale by inclosure in such tight packages, the packages thereafter cannot be opened without injury to the contents; that such packages are never opened except for the purposes of immediate consumption; that to open the same otherwise than for the immediate consumption of the contents so effects the beer as to render it stale, flat, unpalatable and sour, and a complete loss.

10th. That the average price of beer manufactured and sold in the State of Missouri, exclusive of the United States revenue stamps, is $5.00 per barrel, of 31 gallons, and the average price for beer, of like capacity, manufactured out of and imported into the
72 State of Missouri for sale is $6.50.

11th. That of the beer manufactured in the State of Missouri there is exported annually from said State not less than 975,000 barrels, of 31 gallons each, of the aggregate value of about $4,875,000; that of the beer and malt liquors manufactured out of and imported into this State from other States and foreign countries there is exported from this State, in the original and unbroken packages, approximately 400,000 barrels, of 31 gallons each, of the aggregate value of $2,600,000.

12th. That the entire expenditures authorized on account of the actual inspection, as provided by the act itself, amounts to $12,500, and it is admitted for the purpose of this case that the inspection fees provided by the act annually collected upon beer sold in the State of Missouri amount to $350,000, and that this is at least $337,500 in excess of the cost to the State for inspection.

13th. That the fees chargeable under said act upon beer and malt liquors manufactured out of and brought into this State from other States and from foreign countries, for sale in the State of Missouri, exceed the total authorized cost to the State of the inspection approximately $60,000 a year.

14th. That complainant is authorized by general license to carry on business in the State of Missouri, and that its business in said State consists solely of shipping into said State, for the purpose of selling therein or re-shipping therefrom the product of its manufactory in the State of Wisconsin; that in the usual course of its business in such commerce it is compelled and does maintain large warehouses and storerooms in the State of Missouri, and is compelled to and does maintain an office therein as a necessary adjunct to the proper and economical conduct of its business and commerce.

15th. That of the beer brought annually into the State of Missouri by complainant, about 7500 barrels, of 31 gallons each, of the aggregate value of $50,000, is intended to be shipped into other
73 States; and is sold and reshipped into other States; that in due course such beer is unloaded from the cars in which it

has been brought into the State of Missouri and is stored in unbroken bulk and in the original packages in which the same was shipped in the store houses and warerooms of the complainant in the State of Missouri; that sales are thereafter made in the unbroken and original packages in the State of Missouri to persons resident without and non-citizens of said State, for shipment by complainant therefrom, and for delivery in such original packages to the purchasers thereof at agreed points in other States and countries; that such beer when so sold is thereafter shipped from the State of Missouri and no part or portion thereof is consumed within said State; but the beer so shipped into the State of Missouri and sold therein and transported therefrom to other States has never been inspected by the defendants, nor have they *they* ever demanded the right to inspect the same, nor do they now claim the right to do so, nor has the complainant paid or been called upon to pay any inspection fees upon the beer referred to in this paragraph, nor are the defendants threatening or offering to inspect said beer, or to collect any inspection fees therefor. Said defendants are only claiming the right to inspect beer sold in the State of Missouri for consumption therein, and they have only inspected of complainant's beer such as has been exhibited to them for that purpose and intended for sale and consumption in this State.

16th. That to procure the affidavit and certificate of the officer required by the 5th section of the bill above copied, the complainant is compelled to and does expend the sum of fifty cents for each affidavit, that the shipments of beer and malt liquors made by complainant into the State of Missouri average two thousand annually, and to furnish the requisite affidavits costs it annually $1,000.

17th. That defendants have never opened any of the packages containing beer shipped into said State by complainant, or by any other person engaged in the sale of beer in the State of Missouri,
74 but have accepted the affidavit mentioned in the act as a sufficient statement of the ingredients from which the beer was manufactured, and that they have always construed the act to require that the shipper of beer into this State which is manufactured in another State, to present the affidavit referred to in the act to them, and for them to inspect the package to which the affidavit related so as to see that the affidavit refers to such package, and then to label the same, and that they have never opened or attempted to open any package of beer.

18th. That complainant is duly licensed by the State of Missouri to engage in the sale of beer within this State.

19th. That defendants have inspected the beer shipped into the State of Missouri by the complainant for sale for consumption in said State, and have collected from the complainant the inspection fees therefor, but have never inspected any other beer of the complainant; nor collected any fees upon beer not offered for sale for consumption in Missouri; that the fees paid by complainant for the

inspection of beer sold for inspection in the State of Missouri by it since the act went into effect have aggregated about $10,000.

20th. That complainant has no brewery, plant or manufactory for the brewing or manufacture of beer or other malt liquors in the State of Missouri; that its business as conducted and maintained in the State of Missouri consists solely in its maintaining the depot in which it stores the product of its brewery, and in due course of its business it removes said beer from its depots and delivers it in the original packages to its consumers; that none of the products sold by complainant is manufactured or brewed in the State of Missouri, but is manufactured in the State of Wisconsin, and is there put into kegs, barrels and bottles. When thus put up it is shipped to and stored in complainant's depot at Kansas city, and is thereafter removed from such depot and delivered to complainant's customers in the original package; that its depot at Kansas City is necessary for the proper conduct of its business, and is only used as a place for storage and for no other purpose, and that it has con-
75 ducted its business in this manner for many years and desires and intends so to do in the future.

21st. That complainant owns and maintains large warehouses and storehouses, specially constructed in Kansas City, which would be of little or no value for any other business, but all of which is of great value for the purposes now used, to-wit: of the value of $50,000; that it owns and uses a large number of horses and wagons, and other property, of the value of, to-wit: $100,000, and has built up and enjoys a large and well established trade and business from its depot and agency in Kansas City, which yields it annually about $20,000.

22nd. That a number of criminal prosecutions were instituted in the State of Missouri for violations of said act, but that none of said prosecutions were instituted by defendants, or by their direction or at their request, and that all of said prosecutions have since been dismissed, and that there are now no prosecutions for a violation of said act pending in any of the courts of the State of Missouri; that defendants are carrying out and intend to carry out the provisions of said act as far as they are required, as said beer and deputy beer inspector, to do by the terms and provisions of said statute, and not otherwise.

HARKLESS, O'GRADY & CRYSLER &
FRANCIS M. DOWNEY,
Solicitors for Complainant.
E. C. CROW, *Att'y Gen'l.*
W. M. WILLIAMS, *For Defendants.*

76 And afterwards on the same date, to wit, April 1st, 1903, a decree was filed and entered of record in said cause, and which said decree is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Decree.

This cause having been submitted to the court upon the pleadings and the following agreed statement of facts:

"It is stipulated that this cause shall be submitted to the court upon this agreed statement of facts:

1st. That complainant is and was at the time of the institution of this suit a corporation duly created under the laws of the State of Wisconsin, and is and was at said times a citizen of said State, and that its principal place of business is in the city of Milwaukee, in said State of Wisconsin.

2nd. That defendant Crenshaw is a citizen of the State of Missouri, resident at the city of St. Louis, and the defendant John J. Downey is a citizen of the State of Missouri, resident at St. Joseph, in said State, and within the St. Joseph division of the western district of said State.

3rd. That complainant was at the times mentioned in the bill, and still is, engaged in shipping into and selling in the State
77 of Missouri and other States, beer manufactured by it in the State of Wisconsin; that it manufactures in the State of Wisconsin ten different kinds or grades of beer and malt liquors, each kind or grade being separately made or manufactured and requiring special treatment; that it annually transports into and sells in the State of Missouri fifteen thousand barrels of beer and other malt liquors, of thirty-one gallons to the barrel, of the aggregate value of one hundred thousand dollars; that such shipments consist of every kind and grade of beer and other malt liquors so manufactured by it.

4th. That the General Assembly of the State of Missouri enacted a statute at the regular session of said assembly in the year 1899, in words and figures as follows, to-wit:

Inspection—Beer.

"An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors manufactured and sold in this State.

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"SECTION 1. There is hereby created the office of beer inspector which shall be filled by appointment by the governor by and with the consent of the senate within thirty days after the taking effect of this act, and inspector of beer and malt products, who shall serve for a term of four years and until his successor is duly appointed and qualified. He shall be an expert beer brewer and a citizen of the United States and of this State for more than two years next prior to his appointment. He shall give a bond in the sum of twenty-five thousand dollars, to be approved by the governor, for the faithful performance of the duties of his office.

SECTION 2. Said inspector shall, with the approval of the governor, appoint such deputies as may be required to carry out the provisions of this act, not to exceed four in number, and such clerical help as may be necessary. Said deputies shall each receive for their services the sum of fifteen hundred dollars per annum, all salaries and expenses to be paid out of the sums of money now, or that may hereafter be, appropriated for said purpose.

SECTION 3. Every person, persons or corporation who shall erect or keep a brewery for the manufacture or brewing of beer or other malt products within this State, for the purpose of offering the same for sale, shall cause the same to be inspected by said State inspector.

SECTION 4. No person, persons or corporation, engaged in the brewing or manufacture of beer or other malt liquors, shall use any substance, material or chemical in the manufacture or brewing of beer or other malt liquors, other than pure hops or pure extract of hops, or pure barley, malt or wholesome yeast, or rice.

SEC. 5. Every person, persons or corporation who shall receive for sale or offer for sale any beer or other malt liquors other
78 than those manufactured in this State, shall, upon receipt of same, and before offering for sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops, or the extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of the same; upon receipt of said affidavit, the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beer and malt liquors in this State.

SECTION 6. The inspector appointed under this act shall provide himself with an office, and shall record on books kept for that purpose the names and places of business of all persons engaged in the manufacture, brewing and sale of beer and malt liquors. He shall keep a record of all beer and malt liquors manufactured, brewed or sold and the amount produced by each brewer or manufacturer, or sold by dealer. He shall keep a record of all fees collected and all expenditures incurred, and shall make a full and complete report of the same to the governor upon the first day of each year.

SECTION 7. It shall be the duty of each inspector to cause to be inspected all beer and other malt liquors brewed or manufactured or sold in this State, and if he shall find that such beer or other malt liquor has been made from pure hops or the pure extract of hops, or of pure barley, malt or wholesome yeast, or rice, to place upon the package containing said beer or malt liquor his label, certifying that the same has been inspected and made from wholesome ingredients.

SECTION 7*a*. It shall be the duty of the State treasurer upon the taking effect of this act to provide suitable and inimitable State certificates and labels for this inspection, gauging and labelling, having on each proper places for countersigning by the State treasurer and inspector, and shall safely keep the same together with the plates used in making them, when not in actual use. The State treasurer shall from time to time, upon demand, deliver the aforesaid labels to the inspector, taking his receipt therefor, and shall charge said inspector with the same; and shall from time to time as said inspector makes returns of moneys collected in the course of his inspection credit said inspector's account with such sums, and shall keep a true and correct book account of his dealings with said inspector.

SECTION 7*b*. It shall be unlawful for any person to attempt to make or make, to attempt to sell or sell, or attempt to use or use any of the certificates or labels or both provided for by this act, or imitations thereof, except such persons as by law are allowed to make, sell and use the same, and any person so offending shall be deemed guilty of a felony, and, upon conviction, be punished by imprisonment in the penitentiary for a term not to exceed five years.

SECTION 8. The inspector shall be entitled to receive for inspection and gauging one cent for each gallon contained in each package, and two cents for labelling each package. All fees received by the inspector shall be paid into the State treasury. The word package, as used in this act, shall be construed to mean any vessel of any kind other than pint and quart bottles in which any beer or malt liquor may be placed for sale, containing eight gallons or less; when said beer or malt liquors are placed in pint or quart bottles, a package, as used in this act, shall be construed to mean not to exceed forty-eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be placed in suitable cases containing said number and size of bottles,

for inspection and stamping by said State inspector; and
79 when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean each eight gallons or fractional part thereof so contained in said vessel.

SECTION 9. The expense of said office, including the salaries of the inspector and his deputies, shall be paid monthly out of the amount appropriated by law from the general revenue fund on warrants drawn by the State auditor on vouchers approved by the inspector, and all fees received by the inspector under this act shall, on or before the last day of each month, be paid into the State treasury by said inspector, and shall be placed to the credit of the general revenue fund.

SECTION 10. Any person who shall sell any beer or malt liquor within this State which has not been inspected according to the provisions of this act, or contained in packages which shall not have upon them the certificate of the State inspector, or any person — shall fail to destroy said certificate or label after the contents of said package are disposed of, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period of not less than six months, and in addition thereto shall have his license or other authority, giving him the right to manufacture or sell said liquors in this State revoked, and shall not again receive any such license or other authority for a period of two years thereafter.

SECTION 11. If any inspector shall fail to perform any of the duties imposed upon him by this act, or shall in any manner violate any of the provisions thereof, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days and by a fine not exceeding one thousand dollars, and if any said inspector shall fail to faithfully perform the duties enjoined upon him by this act he may be removed from office by the governor.

SECTION 12. All prosecutions for fines and penalties under the provisions of this act shall be either by indictment or information in any court of competent jurisdiction, and when collected shall be paid one-fourth to the informer and three-fourths into the fund for the construction of public roads and highways in the county in which said offense may have been committed and the prosecution begun.

SECTION 13. All beer and other malt liquors manufactured in this State and exported outside of the State for sale, shall be inspected as other liquors designated in this act, but said inspection shall be free of cost to the manufacturer.

SECTION 13a. Every railroad, express or transportation company, shall when requested, furnish to the inspector a duplicate bill of lading or receipt showing the name of the consignor and consignee, date, place received, destination and quantity of beer or malt liquors received by them for shipment to any point within this State. Upon

failure to comply with the provisions herein, said railroad, express or transportation company shall forfeit and pay to the State of Missouri the sum of fifty dollars for each and every failure, to be recovered in any court of competent jurisdiction. The inspector herein provided for, is hereby authorized and empowered to sue in his own name at the relation and to the use of the State. The penalties collected shall be paid into the State treasury.

SECTION 14. There is hereby appropriated out of the State treasury, chargeable to the general revenue fund, for the years 1899 and 1900, for the pay of the inspector, six thousand dollars; for the pay of four deputies, twelve thousand dollars; for rent, stationery, fuel, printing, and such other things as may be necessary for the
80 transaction of the business of said inspector, the sum of six thousand dollars.

Approved May 4, 1899.

That said act was on the 4th day of May, 1899, approved by the governor of said State, and thereafter published in the manner provided by law for the approval and publication of the acts of the said General Assembly.

5th. That at the regular session of the General Assembly of the State of Missouri in the year 1901, an amendment to the eighth section of said act above copied was enacted by the legislature of the State of Missouri, and which said amendatory act is in words and figures as follows, to-wit:

"An act to amend section 7691 of article IV of chapter 117 of the Revised Statutes of 1899, entitled "Inspection of beer," and to fix the fees to be paid therefor.

SECTION 8. "The inspector shall be entitled to receive for inspecting and guaging one-half a cent for each gallon contained in each package, and one cent for labelling each package. All fees received by the inspector shall be paid into the State treasury. The word "package," as used in this article, shall be construed to mean any vessel of any kind other than pint and quart bottles in which any beer or malt liquor may be placed for sale containing eight gallons or less; when said beer or malt are placed in pint or quart bottles, a package, as used in this article, shall be construed to mean not to exceed forty eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be placed in suitable cases containing said number and size of bottles for stamping by said State inspector; and when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean eight gallons or fractional part thereof so contained in said vessel."

That the same was duly approved by the governor of the
81 State of Missouri and promulgated as a statute of said State on the 16th day of April, 1901.

6th. That defendant Crenshaw was appointed by the governor of the State of Missouri inspector of beer and malt liquors under the provisions of said act, and defendant John J. Downey was appointed by said Crenshaw, with the approval of the governor of the State of Missouri, deputy inspector of beer and malt liquors of the State of Missouri; that defendants duly qualified as required by the terms of said act and the constitution of the State, and that at the time this suit was instituted, and long prior thereto, they claimed to be entitled to act as such beer inspector and deputy beer inspector, and to be entitled to discharge the duties of their respective offices, and claimed then and still claim to be authorized and entitled to enforce and effectuate the provisions of the acts of the legislature above copied, and that they have announced and stated their intention of enforcing the provisions of said act, and are enforcing the same and threaten to continue enforcing the provisions thereof against the complainant and all other persons coming within its terms, so far as the enforcement thereof devolves upon them as beer inspector and deputy beer inspector.

7th. That the American Brewing Company, the Consumers Brewing Company, the Home Brewing Company, Anheuser-Busch Brewing Company, Louis Ebert, the St. Louis Brewing Association, the Wm. J. Lemp Brewing Company, the Ferdinand Heim Brewing Company, Rochester Brewing Company, G. Muehlebach Brewing Company, Jacob Moerschel, Charles Schibi, the Ste. Genevieve Brewing & Lighting Association, the M. K. Goetz Brewing Company, John Lester, the St. Joseph Brewing Company, the Moerschel Brewing Company, the Springfield Brewing Company, John B. Busch, the Western Brewing Company, the Cape Brewing & Ice Company, Herl-Redlin Brewing Company, Elizabeth Reidel, Hugo Kropp, the Capital Brewing Company and Caspar Ludwig are engaged in the manufacture and sale of beer in the State of Missouri; that
82 they manufacture annually within the State of Missouri approximately 2,250,000 barrels of beer, of 31 gallons each, of the aggregate value of $12,250,000, of which *they* amount they sell in the State of Missouri approximately 1,275,000 barrels, of 31 gallons each, of the aggregate value of about $6,375,000.

8th. That in addition to the complainant and the persons, firms and corporations just named, there are other persons, firms and corporations engaged in the manufacture of beer in other States, including the States of Illinois and Wisconsin, who annually ship into and sell in the State of Missouri, of the beer manufactured in said other States, not less than 165,000 barrels, of 31 gallons each, of the aggregate value of $10,725,000, and that there are large quantities of ale shipped into the *the* State of Missouri from other States in the Union. That there is also imported into the State of Missouri, by various persons, firms and corporations engaged in the sale of beer, large quantities of beer manufactured in foreign countries, and especially beer from Germany and ale from England, and that the aggregate of such additional shipments of beer and ale imported

from such foreign countries and sold in this State, amounts annually to 1500 barrels, or 31 gallons each, of the aggregate value of $10,000.

9th. That beer, whatever cereals may be used in its manufacture, must for the purposes of sale and consumption be enclosed in tight packages of glass or wood, and when so prepared for sale by inclosure in such tight packages, the packages thereafter cannot be opened without injury to the contents; that such packages are never opened except for the purposes of immediate consumption; that to open the same otherwise than for the immediate consumption of the contents so effects the beer as to render it stale, flat, unpalatable and sour, and a complete loss.

10th. That the average price of beer manufactured and sold in the State of Missouri, exclusive of the United States revenue stamps, is $5.00 per barrel, of 31 gallons, and the average price for beer, of like capacity, manufactured out of and imported into the
83 State of Missouri for sale is $6.50.

11th. That of the beer manufactured in the State of Missouri there is exported annually from said State not less than 975,000 barrels, of 31 gallons each, of the aggregate value of about $4,875,000; that of the beer and malt liquors manufactured out of and imported into this State from other States and foreign countries there is exported from this State, in the original and unbroken packages, approximately 400,000 barrels, of 31 gallons each, of the aggregate value of $2,600,000.

12th. That the entire expenditures authorized on account of the actual inspection, as provided by the act itself, amounts to $12,500, and it is admitted for the purpose of this case that the inspection fees provided by the act annually collected upon beer sold in the State of Missouri amount to $350,000, and that this is at least $337,500 in excess of the cost to the State for inspection.

13th. That the fees chargeable under said act upon beer and malt liquors manufactured out of and brought into this State from other States and from foreign countries, for sale in the State of Missouri, exceed the total authorized cost to the State of the inspection approximately $60,000 a year.

14th. That complainant is authorized by general license to carry on business in the State of Missouri, and that its business in said State consists solely of shipping into said State, for the purpose of selling therein or re-shipping therefrom the product of its manufactory in the State of Wisconsin; that in the usual course of its business in such commerce it is compelled and does maintain large warehouses and storerooms in the State of Missouri, and is compelled to and does maintain an office therein as a necessary adjunct to the proper and economical conduct of its business and commerce.

15th. That of the beer brought annually into the State of Missouri by complainant, about 7500 barrels, of 31 gallons each, of the aggregate value of $50,000, is intended to be shipped into other
84 States; and is sold and reshipped into other States; that in due course such beer is unloaded from the cars in which it

has been brought into the State of Missouri and is stored in unbroken bulk and in the original packages in which the same was shipped in the store houses and warerooms of the complainant in the State of Missouri; that sales are thereafter made in the unbroken and original packages in the State of Missouri to persons resident without and non-citizens of said State, for shipment by complainant therefrom, and for delivery in such original packages to the purchasers thereof at agreed points in other States and countries; that such beer when so sold is thereafter shipped from the State of Missouri and no part or portion thereof is consumed within said State; but the beer so shipped into the State of Missouri and sold therein and transported therefrom to other States has never been inspected by the defendants, nor have they *they* ever demanded the right to inspect the same, nor do they now claim the right to do so, nor has the complainant paid or been called upon to pay any inspection fees upon the beer referred to in this paragraph, nor are the defendants threatening or offering to inspect said beer, or to collect any inspection fees therefor. Said defendants are only claiming the right to inspect beer sold in the State of Missouri for consumption therein, and they have only inspected of complainant's beer such as has been exhibited to them for that purpose and intended for sale and consumption in this State.

16th. That to procure the affidavit and certificate of the officer required by the 5th section of the bill above copied, the complainant is compelled to and does expend the sum of fifty cents for each affidavit, that the shipments of beer and malt liquors made by complainant into the State of Missouri average two thousand annually, and to furnish the requisite affidavits costs it annually $1,000.

17th. That defendants have never opened any of the packages containing beer shipped into said State by complainant, or by any other person engaged in the sale of beer in the State of Missouri,
but have accepted the affidavit mentioned in the act as a
85 sufficient statement of the ingredients from which the beer
was manufactured, and that they have always construed the act to require that the shipper of beer into this State which is manufactured in another State, to present the affidavit referred to in the act to them, and for them to inspect the package to which the affidavit related so as to see that the affidavit refers to such package, and then to label the same, and that they have never opened or attempted to open any package of beer.

18th. That complainant is duly licensed by the State of Missouri to engage in the sale of beer within this State.

19th. That defendants have inspected the beer shipped into the State of Missouri by the complainant for sale for consumption in said State, and have collected from the complainant the inspection fees therefor, but have never inspected any other beer of the complainant; nor collected any fees upon beer not offered for sale for consumption in Missouri; that the fees paid by complainant for the

inspection of beer sold for inspection in the State of Missouri by it since the act went into effect have aggregated about $10,000.

20th. That complainant has no brewery, plant or manufactory for the brewing or manufacture of beer or other malt liquors in the State of Missouri; that its business as conducted and maintained in the State of Missouri consists solely in its maintaining the depot in which it stores the product of its brewery, and in due course of its business it removes said beer from its depots and delivers it in the original packages to its consumers; that none of the products sold by complainant is manufactured or brewed in the State of Missouri, but is manufactured in the State of Wisconsin, and is there put into kegs, barrels and bottles. When thus put up it is shipped to and stored in complainant's depot at Kansas City, and is thereafter removed from such depot and delivered to complainant's customers in the original package; that its depot at Kansas City is necessary for the proper conduct of its business, and is only used as a place for storage and for no other purpose, and that it has con-
86 ducted its business in this manner for many years and desires and intends so to do in the future.

21st. That complainant owns and maintains large warehouses and storehouses, specially constructed in Kansas City, which would be of little or no value for any other business, but all of which is of great value for the purposes now used, to-wit: of the value of $50,000; that it owns and uses a large number of horses and wagons, and other property, of the value of, to-wit: $100,000, and has built up and enjoys a large and well established trade and business from its depot and agency in Kansas City, which yields annually about $20,000.

22nd. That a number of criminal prosecutions were instituted in the State of Missouri for violations of said act, but that none of said prosecutions were instituted by defendants, or by their direction or at their request, and that all of said prosecutions have since been dismissed, and that there are now no prosecutions for a violation of said act pending in any of the courts of the State of Missouri; that defendants are carrying out and intend to carry out the provisions of said act as far as they are required, as said beer and deputy beer inspector, to do by the terms and provisions of said statute, and not otherwise.

HARKLESS, O'GRADY & CRYSLER &
FRANCIS M. DOWNEY,
Solicitors for Complainant.
E. C. CROW, *Att'y Gen'l,*
W. M. WILLIAMS, *For Defendants.*

And the court being fully advised in the premises, declares the law to be that the complainant is not entitled to the injunction and relief prayed for.

It is, therefore, ordered and decreed that the bill of complaint herein be, and the same is hereby, dismissed, at the complainant's

cost, to be taxed by the clerk of this court, and that unless paid within 20 days herefrom that the defendants have execution therefor.

JOHN F. PHILIPS, *Judge.*

87 And afterwards to-wit: on the 25th day of May A. D., 1903, there was filed with the clerk of said circuit court by complainant's solicitors an assignment of errors, which assignment of errors is in words and figures as follows to-wit:

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Missouri, Sitting at the City of St. Joseph, Missouri.

PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Assignment of Errors.

The complainant, The Pabst Brewing Company assigns for error herein

I.

That the court erred in dismissing the complainant's bill and rendering judgment for the defendants.

II.

The court erred in that under the agreed statement of the facts the findings should have been for the complainant instead of the defendants.

JAMES H. HARKLESS,
JOHN O'GRADY,
CHAS. S. CRYSLER, &
FRANCIS C. DOWNEY,
Attorneys for Complainant.

And afterwards to-wit on the same date, there was filed with said clerk of said circuit court complainant's petition for allowance of appeal, and which petition is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

88 & 89 PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Petition for Allowance of Appeal.

The above named complainant, Pabst Brewing Company, conceiving itself to be aggrieved by the order and decree made and entered in the above entitled cause on the first day of April A. D., 1903, wherein and whereby said complainant's bill of complaint was dismissed by the court and final judgment rendered against it, does hereby appeal from said order and decree of April 1st 1903, to the Supreme Court of the United States, for the reasons specified in the assignment or errors filed herein; and it prays that this appeal may be allowed and that a transcript of the record, agreed statement of facts and all proceedings herein be forthwith transmitted to the said Supreme Court of the United States.

JAMES H. HARKLESS,
JOHN O'GRADY, &
CHAS. S. CRYSLER,
Solicitors for Complainant.

And afterwards to-wit: on the same date, the following order allowing appeal was made and entered on the journal of said court, in words and figures as follows:

In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Order Allowing Appeal.

The above named complainant, Pabst Brewing Company, having duly filed its assignment of errors and petition for appeal, on
90 motion of Harkless, O'Grady & Crysler and Francis C. Downey, solicitors for complainant, it is ordered that an appeal to the Supreme Court of the United States from the order and decree heretofore filed and entered herein on the 1st day of April A. D., 1903, be and the same is hereby allowed and that a certified transcript of

the record, agreed statement of facts and all proceedings herein, be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond for costs and damages on appeal be fixed at the sum of five hundred dollars.

Dated this 25th day of May A. D., 1903.

JOHN F. PHILIPS, *Judge.*

And afterwards to wit, on the same date (May 25th, 1903) there was file- with the clerk of said court, a bond for costs and damages on appeal, in words and figures as follows:

UNITED STATES OF AMERICA, *set:*

Know all men by these presents, that we, Pabst Brewing Company as principal and E. F. Swinney and H. T. Abernathy as sureties, are held and firmly bound unto G. Y. Crenshaw and John J. Downey, in the full and just sum of five hundred no/100 dollars ($500.00) to be paid to the said G. Y. Crenshaw and John J. Downey, their heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 19th day of May, in the year of our Lord, one thousand nine hundred and three.

Whereas, lately at the March term of the circuit court of the United States for the St. Joseph division of the western district of Missouri, in a suit depending in said court between Pabst Brewing Company, complainant and G. Y. Crenshaw and John J. Downey defendants, a decree dismissing complainant's bill of complaint was rendered against the said Pabst Brewing Company and the said Pabst Brewing Company has obtained an order of appeal of the said court to reverse the decree in the aforesaid suit, and a citation
90½ directed to the said G. Y. Crenshaw, and John J. Downey, citing and admonishing them to be and appear in the Supreme Court of the United States, sixty days from and after said citation.

Now, the condition of the above obligation is such, that if the said Pabst Brewing Company shall prosecute said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

PABST BREWING COMPANY,
By JAS. H. HARKLESS, [SEAL.]
Agent & Attorney.
E. F. SWINNEY, [SEAL.]
H. T. ABERNATHY. [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

JOHN PHILLIPS, *Judge.*

91 UNITED STATES OF AMERICA, *ss:*

To G. Y. Crenshaw and John J. Downey, defendants, and to Edwin C. Crow, att'y general of Missouri, and W. M. Williams, solicitors for defendants, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington D. C. thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the western division of the western district of Missouri, wherein The Pabst Brewing Company is complainant and G. Y. Crenshaw and John J. Downey are defendants, to show cause, if any there be, why the judgment rendered against the said complainant as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John F. Phillips judge of the circuit court of the United States for the western division of the western district of Missouri, this 3rd day of July in the year of our Lord one thousand nine hundred and three.

JNO. F. PHILIPS, *Judge.*

92 UNITED STATES OF AMERICA, } *ss:*
Western Division of the Western District of Missouri, }

We hereby acknowledge due service of the within citation this 6th day of July A. D. 1903.

E. C. CROW, *Att'y Gen'l,*
W. M. WILLIAMS,
Attorney for Defendant in Error.

93 UNITED STATES OF AMERICA, } *ss:*
Western District of Missouri, }

I, Calvin C. Colt, clerk of the circuit court of the United States, for the Saint Joseph division of the western district of Missouri, hereby certify that the above and foregoing is a full true and complete transcript of the record, agreed statement of facts and all proceedings had and entered of record in the cause of Pabst Brewing Co. *vs.* G. Y. Crenshaw and John J. Downey, as fully as the same are on file and entered on the journal of said court, and that the original citation in said cause with acknowledgment of service therein is hereto attached.

In witness whereof, I have this 27th day of June A. D. 1903, at the city of St. Joseph, Missouri set my hand as clerk and affixed the seal of said court.

[Seal U. S. Circuit Court, St. Joseph Div., Western Dist. Mo.]

CALVIN C. COLT, *Clerk.*

[Endorsed:] Transcript Pabst Brewing Company, a corporation, vs. G. Y. Crenshaw and John J. Downey. From St. Joseph division of the western district of Missouri. United States circuit court.

Endorsed on cover: File No. 19,009. W. Missouri C. C. U. S. Term No. 358. Pabst Brewing Company, appellant, vs. G. Y. Crenshaw and John J. Downey. Filed July 14th, 1903.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 12 1904
JAMES H. McKENNEY,
Clerk.

IN THE SUPREME COURT OF THE UNITED STATES.

PABST BREWING COMPANY,
Appellant,

vs.

G. Y. CRENSHAW AND
JOHN J. DOWNEY,
Defendants.

85.

BRIEF AND ARGUMENT FOR APPELLANT.

JAMES H. HARKLESS,
CHARLES S. CRYSLER,
CLIFFORD HISTED,
FRANCIS C. DOWNEY,
Attorneys for Appellant.

BYRON S. ADAMS, PRINTER, WASHINGTON, D. C.

IN THE SUPREME COURT OF THE UNITED STATES.

PABST BREWING COMPANY,
Appellant,

vs.

G. Y. CRENSHAW AND
JOHN J. DOWNEY,
Defendants.

BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from a decree of the Circuit Court of the United States for the Western District of Missouri dismissing complainant's bill. The bill was filed by the Pabst Brewing Company, a corporation of the State of Wisconsin, to enjoin the defendant, G. Y. Crenshaw, as state beer inspector, and his assistant, from enforcing against the complainant the provisions of a certain act of the legislature of Missouri entitled "An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors manufactured and sold in this State," approved March 4, 1899. (Session laws of Missouri, 1899, p. 228.)

The act, in its entirety, is set forth as an appendix to this brief. It creates the office of beer inspector, to be appointed by the governor of the State, and defines his duties.

Section 3 of the act provides that every person or corporation keeping a brewery for the manufacture of beer or malt products within the State shall cause the same to be inspected by the beer inspector.

Section 4 requires that such malt liquor shall contain no other substances than pure hops or pure extract of hops or pure barley, malt or wholesome yeast or rice.

Section 5, which has special reference to the beer or malt liquors manufactured without the State, provides, in substance, that every person or corporation who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in the State shall, upon receipt of the same and before offering for sale, notify the inspector, who shall be furnished with a sworn affidavit subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person, having actual knowledge of the composition of said beer, or other malt liquors, that no material other than pure hops, or the extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of the same, and then provides: "Upon receipt of said affidavit, the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beer and malt liquors in this State."

Section 6 provides for the keeping of books of record of fees collected and expenditures incurred, to be reported to the governor of the State.

Section 7 makes it the duty of the inspector to cause to be inspected all beer or other malt liquors brewed, manufactured or sold in the State, and if found to come up to the requirements of the statute, he shall place upon the package containing such beer or malt liquor his label certifying that the same has been inspected and is made of wholesome ingredients.

Section 8 fixes the inspection fees at one cent for each gallon contained in each package and two cents for labeling each package, which fees are to be paid into the state treasury. The word "package" as used in the act shall mean any kind of vessel, other than pint and quart bottles, in which any beer or malt liquor may be placed for sale, containing eight gallons or less. When said beer, etc., is placed in pint or quart bottles, a "package" shall be construed not to exceed forty-eight pint bottles or twenty-four quart bottles, which, when manufactured and so bottled, must, before sale, be placed in suitable cases containing said number and size of bottles, for inspection and stamping by said state inspector; and when placed in vessels containing more than eight gallons the word "package" shall mean each eight gallons, or fractional part thereof, so contained in said vessel.

Section 9 provides that the expense of said office, including the salaries of the inspector and his deputies, shall be paid monthly out of the amount appropriated by law from the general revenue fund; and all fees received by the inspector under the provisions of the act shall, on or before the last day of each month, be paid into the state treasury, and placed to the credit of the general revenue fund.

Section 10 declares that any person who shall sell any beer or malt liquors in the State which have not been inspected according to the provisions of the act, or contained in packages which shall not have upon them the certificate of the State inspector, etc., shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period not less than six months, and in addition thereto shall have his license or other authority giving him the right to manufacture or sell said liquors in the State, revoked, and shall not again receive any such license or authority for a period of two years.

Section 12 provides that all prosecutions for violations and penalties under the provisions of the act shall be either by indictment or information in any court of competent jurisdiction.

Section 13 declares that all beer or other malt liquors manufactured in the State and exported outside of the State for sale, shall be inspected as other liquors designated in the act, but said inspection shall be free of cost to the manufacturer.

It was charged in the bill of complaint that the complainant is a manufacturer, in the State of Wisconsin, of grades of beer and malt liquor requiring special treatment. That it annually ships into Missouri not less than 15,000 barrels of beer, and other malt liquors, of 31 gallons each, of the aggregate value of not less than $100,000. That it has a warehouse in Missouri in which its beer is stored, and that about one-half shipped into the State is subsequently reshipped from its warehouse and sold in other States. The bill states that a large number of persons are engaged in the manufacture of beer in Missouri, a large quantity of which is for sale in the State, and also for export therefrom, and that a very large quantity is also shipped into the State from other States and countries. It is further charged in the bill that while the act is passed ostensibly as an inspection measure, the fees taxed bear no just relation to the expense of such inspection. That the entire expense of the inspection, as provided by the act itself, amounts to $12,000 per year, while the inspection fees for the beer annually sold in the State, as set forth in the bill, amount to not less than $555,000, an excess of more than $500,000 above the cost of the inspection, which excess of over $500,000 is, by the terms of the act, and by its necessary operation and effect, a specific tax upon beer sold in the State of Missouri levied for the purpose and required by the act to be turned into the general revenues of the State for the use of such general revenue, and that

to such tax the complainant, as an interstate shipper, contributes a large sum. And it is charged in the bill that the said act is a burden upon interstate commerce beyond the police power of the State to impose, and that it is, therefore, violative of the commerce clause of the federal constitution.

A number of other federal claims of immunity from the operation of the statute were invoked by the bill, which were briefly epitomized by the learned District Judge who disposed of the case, as follows:

"1st. That the act imposes upon the product of the importer into the State a greater exaction than upon the product of the manufacturer in the State, or is imposed upon the property of other persons in the State, and is, therefore, an unjust discrimination against the non-resident brewer; and is, therefore, in conflict with the fourteenth amendment and the interstate commerce clause of the Federal Constitution.

"2nd. That not less than 7,500 barrels of 31 gallons each, of the value of $50,000, shipped into the State by the complainant, is intended for subsequent exportation to other States; and is sold and reshipped to other States in the original packages, although brought into the State and stored in complainant's warehouse; and that complainant is compelled to pay, and does pay, to the State inspection fees upon that part of its product intended for other States, in violation of section 8 of article 1 of the Constitution of the United States.

"3rd. That such inspection fees are not required to be paid on the beer manufactured in the State of Missouri and exported therefrom, while such fees are required on the beer manufactured outside of the State by complainant and shipped through Missouri into other States.

"4th. That while $12,000 is appropriated for the cost of inspection, and that as no part of this sum is paid by the manufacturer of beer in the State of Missouri upon their products exported for sale, an unjust proportion of these salaries is collected from the complainant.

"5th. That the act requiring the non-resident brewers to furnish an affidavit of the ingredients from which his

beer is manufactured costs the complainant one thousand dollars annually, while the domestic manufacturers are not required to furnish such affidavits; and that when such affidavit is submitted, it is of no force or effect and does not take the place of an inspection. But that the act, nevertheless, requires in addition to such affidavit an inspection which necessitates the breaking open of the packages in which the beer is contained, and that this will result in the destruction of at least one package of each shipment, as the beer in the bottle opened will become 'stale, flat and unprofitable.'"

The foregoing extracts from the bill, as epitomized, pertain to subjects not now here for discussion, but are stated as part of the history of the case.

The Supreme Court of Missouri by a divided Court, four to three, has affirmed the validity of the statute.

State vs. Bixman, 162 Mo. 1.

It was held by the Supreme Court of Missouri that the act did not apply to beer shipped into the State destined for export beyond its borders. In its application to beer manufactured within the State, the Supreme Court held that the construction placed by the brewers upon the statute, requiring a physical inspection and analysis of the contents of the package after it was put up by the brewer for sale, was untenable, holding that it was contemplated that the inspection should be made of the mash or fermented beer at the brewery before it passed into the package or receptacle for sale. The Court did not have before it for consideration the case of non-resident brewers, in which this method of inspection, suggested as the course to be pursued under the statute, would be manifestly impracticable. Commenting upon these facts of the case and the interpretation by the Supreme Court adverted to, the lower court said, in the course of its opinion (p. 43):

"Reading the phrase in Section 5, 'upon receipt of said affidavit, the inspector shall inspect and label the packages containing said beer or malt liquor,' in connection with Sections 7 and 8, which impose upon the inspector the duty of causing to be inspected all beer or other malt liquors brewed, or manufactured, or sold in this State, to determine its ingredients, gives color to the contention that a physical inspection of the imported beer for sale in the State, in the mind of the legislature, is as much required as in the case of the domestic manufacturer. It must be conceded that the Supreme Court of the State, in passing upon said Section 7, in respect of the domestic manufacturer, was placed in distress in upholding the validity of the statute, to avoid a construction that seemingly required a physical opening of the package after it was put up by the brewer for sale, by holding that it was contemplated that the inspection should be made of mash or fermented beer at the brewery before it passed into the packages or receptacles for sale. The Court felt compelled to resort to this judicial *coup de tat* to avoid the criticism that such mode of inspection involved a physical destruction of a part of the property of the owner, without making any provision for just compensation therefor, and thus taking private property without due process of law; and further to escape following the recognized rule that in determining the validity of a legislative act, the question is, what do its terms authorize to be done under them, rather than, what is done under them. But, as already shown, the mode of inspection suggested by the State Supreme Court respecting the inspection of domestic beer, would be quite impracticable in the case of beer manufactured outside of the State."

And thereupon the learned Federal Judge held that in order to sustain the act, as applied to interstate shipments of beer, *there could be no physical examination or inspection of the beer at all*, but the entire requirement of the act must be confined to the production of the affidavit and affixing the stamp or label on the package mentioned in Section 5.

The case was practically decided upon a demurrer to the bill. It was the opinion of the Court that it was bound

to accept and follow the decision of the State Supreme Court and treat this as an inspection act, and therefore a proper exercise of the police power of the State; that so regarding the act it came within the terms of the Wilson bill and was not an unlawful burden upon interstate commerce. The demurrer, however, was overruled upon a technical point of pleading not now necessary to consider. Afterwards an agreed statement of facts was signed by the parties and submitted to the Court which sustained the allegations of the bill and upon which, following the reasoning announced in its opinion upon the demurrer, and upon the grounds just indicated, the Court entered a decree dismissing the bill. It is to review this decree that this appeal is prosecuted.

In view of the ruling of the Supreme Court that the inspection fees cannot be exacted on beer destined for reshipment beyond the State, the particular ground of grievance in complainant's bill based on alleged discrimination in favor of the domestic manufacturer and importer, is eliminated from the case. Furthermore, under the construction of the Federal Circuit Court that the only method of inspection, so-called, permissible under the statute, is the requirement of an affidavit, and it appearing from the agreed statement that such is in fact the practice of the state officers charged with administering the law, the further ground of complaint of the destruction of the property of the brewer without compensation therefor, is also taken out of the case.

This, therefore, leaves as the sole remaining question for determination in this Court whether the act as thus construed and administered is a proper exercise of the police power of the State and is not a burden upon interstate commerce in contravention of Section 8 of Article 1 of the Constitution of the United States as applied to the complainant, an interstate shipper and dealer.

The facts charged in the bill of the extent of revenue derived from the act and the cost of its administration are

substantially admitted. The Supreme Court of Missouri held notwithstanding such facts "that the act was not a revenue measure as distinguished from a mere inspection bill under the police power of the State." The learned District Judge, erroneously, as we conceive, construed this declaration of the Supreme Court as binding upon the Federal Court and therefore held accordingly and dismissed the bill.

SPECIFICATIONS OF ERROR.

I.

The Court erred in holding that the act in question, as construed and administered by the State Court and officers, was not, as against the complainant, a burden upon interstate commerce in violation of Section 8 of Article 1 of the Constitution of the United States.

II.

The Court erred in deeming itself bound by the characterization placed upon the statute by the Supreme Court of the State as an inspection measure within the police power of the State to enact.

III.

The Court erred in holding that the Act of Congress of August 8, 1890, authorizes a statute like the one in question.

IV.

For the foregoing reasons the Court erred in dismissing complainant's bill.

ARGUMENT.

The argument which we have to make in this case is centered in the foregoing constitutional provision. It, perhaps, will tend to clearness and precision of thought if we divide our topic into a number of subdivisions into which

it naturally falls under the facts in the case. Whilst the interstate character of complainant's business and its consequent right to raise the federal question was not doubted by the Court below, nor disputed by counsel for the State, it is, perhaps, none the less proper to premise by briefly adverting to the nature of the business as conducted by complainant, for the purpose of demonstrating that it is of a character which can invoke the immunity claimed.

I.

THE BUSINESS OF THE COMPLAINANT IN MISSOURI IS THAT OF INTERSTATE COMMERCE.

Paragraph 20 of the agreed statement of facts, appearing on page 66 of the record, sufficiently describes the nature of complainant's business and the manner in which it is conducted. It is as follows:

"20th. That complainant has no brewery plant or manufactory for the brewing or manufacture of beer or other malt liquors in the State of Missouri; that its business as conducted and maintained in the State of Missouri consists solely in its maintaining a depot in which it stores the product of its brewery, and in due course of its business it removes said beer from its depots and delivers it in the original packages to its consumers; that none of the products sold by complainant is manufactured or brewed in the State of Missouri, but is manufactured in the State of Wisconsin, and is there put into kegs, barrels and bottles. When thus put up it is shipped to and stored in complainant's depot at Kansas City, and is thereafter removed from such depot and delivered to the complainant's customers in the original package; that its depot in Kansas City is necessary for the proper conduct of its business, and is only used as a place for storage and for no other purpose, and that it has conducted its business in this manner for many years and desires and intends so to do in the future."

Schollenberger vs. Pennsylvania, 171 U. S. 1, presents a case very similar in its features, in this respect: There it appeared that oleomargarine was consigned by the Oakdale

Manufacturing Company of Rhode Island to its agents, as wholesale dealers in oleomargarine in Philadelphia, and was there sold by them in the original packages to retailers in the city. The only distinction between the cases is that here the complainant uses its own warehouse or depot in Kansas City to facilitate its business, the distribution thence being made by its own employes, whereas, in the Schollenberger case the Oakdale Manufacturing Company utilized the warehouse and depot of another. Both cases present the right of the commodity to retain its character of interstate commerce until final sale and distribution among the trade. This claim was sustained by this Court. After reviewing the authorities and demonstrating that the commerce clause extends to every species of commercial intercourse and does not stop at the external boundary of the State, but that sale is the object of and indispensable to importation into the State, the Court concludes, on page 24:

"The importer had the right to sell not only personally, but he had the right to employ an agent to sell for him. Otherwise his right to sell would be substantially valueless, for it cannot be supposed that he would be personally engaged in the sale of every original package sent to the different States in the Union. Having the right to sell through his agent, a sale thus effected is valid.

"The right of the importer to sell cannot depend upon whether the original package is suitable for retail trade or not. His right to sell is the same, whether to consumers or to wholesale dealers in the article, provided he sells them in original packages."

So in the case of United States vs. Swift & Co., 122 Federal, 529, which was an indictment of the defendants for violation of the Sherman anti-trust act, it was contended by the defendants that their business was not interstate commerce. The following paragraph of the opinion, on page 533, sufficiently presents the point and the way in which Circuit Judge, Grosscup, disposed of it :

"I think the same is true of meat sent to agents, and sold from their stores. The transaction in such case, in reality, is between the purchaser and the agents' principal. The agents represent the principal at the place where the exchange takes place; but the transaction, as a commercial entity, includes the principal, and includes him as dealing from his place of business. Indeed such privity exists between the principal and the transaction that he could, at the instant, as a citizen of another State, sue upon the transactions in the Federal Courts; nor have I any question that if the conditions of this case were reversed, so that the defendants were invoking the shelter, instead of seeking to escape the obligations, of the commerce clause, federal law, would be found equal to the protection asked."

Neither is there anything in the cases of New York vs. Roberts, 171 U. S. 658, 662; Reymann Brewing Co. vs. Brister, 179 U. S. 445, and cognate decisions of this Court, which militate against the interstate quality of complainant's business. Those were cases which involved the right of the State to levy a tax, a distinction long recognized and well settled and clearly pointed out by Judge Grosscup in his opinion in United States vs. Swift & Co., supra, (p. 533) as follows:

"It is enough to say that because a thing can be taxed by the State, it does not follow that it lies outside the body of interstate commerce; for commerce, interstate as well as domestic, is subject to the police and taxing power of the State, so long as the exercise of such power does not interfere with the national government's exclusive right of regulation."

See also Robbins vs. Shelby Taxing District, 120 U. S., 489;
Stockard vs. Morgan, 185 U. S., 27-30.

We will hereafter discuss the Act of Congress known as the Wilson bill in its relation to the power of the State and in respect to any distinction which it makes between liquors and other commercial commodities. Suffice to say

here that the Wilson bill does not furnish a rule for determining the interstate aspect of a business, but merely permits the exercise of the police power of the State at an earlier period of time upon intoxicating liquors. The complainant's business, therefore, being interstate commerce, as defined in the decisions of this Court, we come to the pivotal question in this case:

II.

IS THE STATUTE WITHIN THE POLICE POWER OF THE STATE?

There are two prominent objections which we urge to this legislation:

First, the fees charged for inspection bear no just relation to the expense, but are so grossly in excess thereof and out of proportion thereto as to make the act an unreasonable burden upon commerce; and, second, the inspection, so-called, authorized by the statute, as construed by the lower court and as practiced by the State officers, is not an inspection in fact, but is a palpable pretense, which is not calculated to and which cannot secure pure and wholesome beer, or accomplish any other public good in relation to the commodities affected by the act.

Section 8 of the act provides for an inspection fee of one cent per gallon on all beer and malt liquors manufactured and sold in the State, and two cents for labeling each package of eight gallons or less, making a total fee of one and one-fourth cents per gallon. All of these fees are required to be paid into the State treasury and passed to the credit of the general revenue fund of the State.

Section 9 provides that all fees received by the inspector shall, on or before the last day of each month, be paid into the State treasury by the inspector and shall be placed to the credit of the general revenue fund.

Section 7a provides that the State treasurer shall cause suitable stamps to be prepared for the enforcement of the act, the inspector giving his receipt therefor and being charged upon the books of the treasurer for the amount, and receiving credit against such charge for moneys paid in.

None of these so-called inspector's fees go to the inspectors, but into the State treasury. It is conceded by the 12th paragraph of the agreement of facts, page 64 of the record:

"That the entire expenditures authorized on account of the actual inspection, as provided by the act itself, amount to $12,500, and it is admitted, for the purpose of this case, that the inspection fees provided by the act annually collected upon beer sold in the State of Missouri, amount to $350,000, and that this is at least $337,500 in excess of the cost to the State for inspection."

And again it is admitted by paragraph 13 Id:

"That the fees chargeable under said act upon beer and malt liquors manufactured out of and brought into this State from other States and from foreign countries, for sale in the State of Missouri, exceed the total authorized cost to the State of the inspection approximately $60,000 a year."

The inspectors are paid salaries and such salaries, together with other incidental expenses for the enforcement of the act, as shown by the agreement of facts, cannot exceed, in the aggregate, $12,500 per year. These are paid out of the general fund of the State, and are provided for by the usual appropriation bills.

Indeed, it is a part of the history of this legislation, to be gathered from the Senate and House Journals, that it was introduced and regarded throughout as a revenue measure, without disguise at first, but afterwards attempted to be concealed under the disingenuous caption finally placed on the bill. While it is true that the debates on a bill are not resorted to to determine the meaning of an act, recourse may none the less be had to those debates as a part of the history of the time and to determine broadly what the purpose and object of the legislation was. As introduced in the house, originally, the bill, file No. 483, was entitled "An act creating the office of inspector of beer and malt

liquors and providing for the creation of a fund for the construction of roads and public highways." (See House Journal, 1899, p. 190.) The Senate bill, file No. 382, with one exception, was identical with the house bill, and was entitled "An act creating the office of inspector of beer and malt liquors and providing for the increase of the general revenue fund." (See Senate Journal, 1899, p. 386.) Notwithstanding the change in the title of the bill, as finally passed, it still retains the prominent and controlling features which induced the legislation, by securing to the general fund of the State the entire revenue to be derived from its operation. The general plan and purpose of the legislation as finally shaped in this statute are the same as when originally introduced in the House and Senate. The only thing which occurred which would transform that which was confessedly and avowedly a revenue measure into a mere inspection bill was the specious change in the title by striking out the words "and providing for an increase in the general revenue," and inserting in lieu thereof "and providing for the inspection of beer and malt liquors manufactured and sold in this State." The records of the House and Senate Journals upon the measure show that the members of the legislature understood the act as one providing for the increase of the revenues of the State, and that inspection was nothing more than a pretext for revenue. (See House Journal, 1899, pp. 278 and 452 and Senate Journal, 1899, pp. 610 and 620.)

It is also a part of the public history of Missouri that at this time the public revenues of the State were depleted and large appropriations for sustaining the public institutions of the State could not be met from any funds of the State, and a crisis in its financial affairs was at hand. To meet this emergency and to raise a fund without increasing the taxes upon the people, those intrusted with the State policy at the time devised this scheme of legislation. It is also worthy of observation that the legislature which

convened the following year and before revenue could be obtained from the beer bill, pursuing the same policy, passed a similar statute seeking to impose the same burdens upon the manufacture and sale of distilled liquors. The legislature, however, did not seek even to conceal the object of this last statute, and by the last section of the act declared an emergency to exist in the public revenues of the State and made the act immediately operative. By reason of this open avowal of legislative purpose, the illegality of the statute was so apparent that even the State circuit courts were bound to so hold, and this legislation last adverted to has never been put in force. There is no difference in principle, however, or in the object sought to be attained in these two statutes, and the only difference between the two was that the legislature put a different label on the bills. (See session acts 1901, p. 226.)

But the Supreme Court of the State held, none the less, by a divided Court, four to three, that the statute was not a revenue measure, but was simply an inspection bill passed under the police power of the State and represented a proper exercise of State power. The learned District Judge felt bound to accept this judicial declaration of the legislative purpose as coercive upon him, although his opinion indicates that he was not in accord with the conclusion of that Court. Further on, in the course of his opinion, it is suggested, page 46:

"The fact that a large revenue may incidentally result is not fatal to such a law, especially in respect to intoxicants."

He cites, as supporting his view, Cooley on Taxation (2nd ed.) p. 599, and State vs. Ludington, 33 Wis. 137. The citations are inapposite to the matter in hand. They relate to license fees and were dealing with the rule to be applied in regulating the amount of license which might be exacted for the sale of intoxicating liquors, and had no reference to interstate commerce. But this act was not

passed as a license measure. It has nothing to do with the general statutes of the State requiring license fees from those engaged in such business. It was not passed to restrict or in any degree regulate the sale of beer. The only pretext put forward to sustain the legislation is that it is an inspection bill designed to secure a pure and wholesome product. And this is so declared by the Supreme Court of the State. The right to sell, and regulations and restrictions concerning the sale of beer in Missouri are not found within the statute under review. They exist in an entirely independent body of legislation. This act confers no license and no privilege to sell. Complying with every provision of this law, and complying with this law alone, no man can pursue the calling of a brewer; neither can he bring his beer into the State for sale. It is vain to call that a license tax for which no license or privilege is granted. A person may deal in beer without paying this tax. The wholesale dealer in malt liquors, licensed to pursue his calling under other laws, may sell malt liquors whether he pays the inspection charges or whether they are paid by someone else. The charge having been paid by the brewer, the dealer may sell beer without let or hindrance so far as this law is concerned. Malt liquors once inspected may be sold and resold times without number without the payment of further charge. This act is not violated by any one selling beer without having paid for the privilege of doing so. Read from its beginning to its end nothing can be made of this statute except a most ingeniously contrived device to extract a large revenue from these brewers under the guise of an inspection law. There does, of course, exist upon the statutes of Missouri an independent body of legislation regulating the sale of intoxicating liquors in the State and providing for licensing vendors. The complainant and others similarly situated are compelled, of course, to pay these license fees, commonly known as dramshop license,

outside of and notwithstanding the inspection fees provided for by this act. They obtain their authority to engage in the business by virtue of these dramshop licenses. As to the amount of such license fees exacted, in compensation for this privilege of transacting business, the authorities cited by the learned Judge, in his opinion are applicable, but they manifestly have nothing to do with a case like the one presented here.

Neither is there anything in the suggestion that malt liquor is to be distinguished from all other merchantable commodities in respect of the extent of inspection fees which may be laid upon the product by the States in virtue of their police power. We are now referring, of course, to those States which recognize such liquors as a lawful subject of commerce. No distinction of the character sought to be drawn by the Court below, in its opinion, can be supported by any authority, but on the contrary a reference to the many decisions of this Court shows that intoxicating liquors and liquids where authorized as legitimate articles of commerce by the public policy of the State, are upon exactly the same plane as any other legitimate article of commerce in their relation to the commerce clause of the constitution, and are, therefore, subject to the same burdens and entitled to the same privileges. Thus in the License Cases, 5 How. 599, Mr. Justice Catron, speaking of the police power as reserved to the States and its relation to the power granted to Congress over commerce, said :

"The assumption is that the police power was not touched by the constitution, but left to the States as the constitution found it. This is admitted ; and whenever a thing, from character or condition, is of a description to be regulated by that power in the State, then the regulation may be made by the State, and congress cannot interfere. But this must always depend on facts, subject to legal ascertainment, so that the injured may have redress. And the fact must find its support in this, whether the prohibited article belongs to, and is subject to be regulated as part of,

foreign commerce, or of commerce among the States. If, from its nature, it does not belong to commerce, or if its condition, from putrescence or other cause, is such when it is about to enter the State that it no longer belongs to commerce, or, in other words, is not a commercial article, then the State power may exclude its introduction. And as an incident to this power, a State may use means to ascertain the fact. And here is the limit between the sovereign power of the State and the federal power. That is to say, that which does not belong to commerce is within the jurisdiction of the police power of the State ; and that which does belong to commerce is within the jurisdiction of the United States. And to this limit must all the general views come, as I suppose, that were suggested in the reasoning of this Court in the cases of Gibbons vs. Ogden, 9 Wheat. 1 ; Brown vs. The State of Maryland, 12 Wheat. 419 ; New York vs. Miln, 11 Pet. 102."

In Bowman vs. Chicago, etc. Ry. Co., 125 U. S. 465, at page 488, this Court quotes as follows from Gibbons vs. Ogden, 9 Wheat. 1, 203 :

"The object of inspection laws is to improve the quality of articles produced by the labor of a country ; to fit them for exportation ; or, it may be, for domestic use. They act upon the subject, before it becomes an article of foreign commerce, or of commerce among the States, and prepare it for that purpose."

And then the Court add :

"They are confined to such particulars as, in the estimation of the legislature and according to the customs of trade, are deemed necessary to fit the inspected article for the market by giving to the purchaser public assurance that the article is in that condition and of that quality which makes it merchantable and fit for use or consumption. They are not founded on the idea that the things, in respect to which inspection is required, are dangerous or noxious in themselves."

And the Court quotes further from Turner vs. Maryland, 107 U. S. 38, 55 :

"Recognized elements of inspection laws have always been—quality of the article, form, capacity, dimensions, and weight of package, mode of putting up, and marking and branding of various kinds—all these matters being supervised by a public officer having authority to pass or not to pass the article as lawful merchandise, as it did or did not answer the prescribed requirements. It has never been regarded as necessary, and it is manifestly not necessary, that all of these requirements should coexist in order to make a valid inspection law. Quality alone may be the subject of inspection, without other requirements, or the inspection may be made to extend to all of the above matters."

And then the Court observe in the opinion in the Bowman case:

"It has never been regarded as within the legitimate scope of inspection laws to forbid trade in respect to any known article of commerce, irrespective of its condition and quality, merely on account of its intrinsic nature and the injurious consequences of its use or abuse."

In Leisy vs. Hardin, 135 U. S. 100, 110, it was declared:

"That ardent spirits, distilled liquors, ale and beer are subjects of exchange, barter and traffic, like any other commodity in which a right of traffic exists, and are so recognized by the usages of the commercial world, the laws of Congress and the decisions of courts, is not denied."

And on page 114 the Court quotes, with approval, the language of Mr. Justice Matthews in the Bowman case (page 493):

"For the purpose of protecting its people against the evils of intemperance, it has the right to prohibit the manufacture within its limits of intoxicating liquors; it may also prohibit all domestic commerce in them between its own inhabitants, whether the articles are introduced from other states or from foreign countries; it may punish those who sell them in violation of its laws; it may adopt any measures

tending, even indirectly and remotely, to make the policy effective until it passes the line of power delegated to Congress under the Constitution. It cannot, without the consent of Congress, express or implied, regulate commerce between its people and those of the other States of the Union in order to effect its end, however desirable such a regulation might be."

While more recently, in Scott vs. Donald, 165 U. S. 58, 91, the Court took occasion to say:

"So long, however, as state legislation continues to recognize wines, beer and spirituous liquors as articles of lawful consumption and commerce, so long must continue the duty of the Federal Courts to afford to such use and commerce the same measure of protection, under the Constitution and laws of the United States, as is given to other articles."

It is clear from the foregoing citations that the exercise of the right of inspection necessarily carries with it a recognition of the quality of the article as commerce. The State does not possess the power, under the guise of inspection laws, to forbid trade in articles recognized by the public policy of the State as legitimate commercial commodities. Its jurisdiction in that behalf is to "fit the inspected article for the market by giving to the purchasing public assurance that the article is in that condition and of that quality which makes it merchantable and fit for use and consumption." And as shown from the foregoing decisions, the circumstance that the commodity because of its intrinsic nature, and not by reason of any lack of purity, as introduced into the market, may cause or tend to cause injurious consequences in its use or abuse, does not influence in the slightest the extent of the power of the State under its inspection laws.

This thought was most cogently put by Mr. Justice Burgess in his dissenting opinion upon this very same statute.

State vs. Bixman, 162 Mo., 60,
as follows:

"Revenue is never the object to be attained by inspection laws, nor to restrict the sale of the commodity inspected, but they are for the protection of the people from fraud and imposition in certain articles in use, and to promote health and advance morals; and the character of the article inspected—whether its use as a beverage or otherwise be demoralizing or not,—is of no significance, in so far as the fee to be charged therefor is concerned; for, whatever may be its character, nothing more than a reasonable fee for the labor and cost attending the inspection has ever been, or can be, allowed therefor. And, in so far as I am concerned, I have been unable to find an authority to the contrary. Nor do I believe that one can be found."

And the learned judge quotes the following language from Mr. Justice Field, in the Munn case (94 U. S., 146):

"One may go, in like manner, through the whole round of regulations authorized by legislation, State or municipal, under what is known as the police power, and in no instance will he find the compensation of the owner for the use of his property has any influence in establishing them."

The foregoing citations and authorities demonstrate the fallacy involved in the opinion of the Court below in assuming a distinction to exist between the power of the State in regulating inspection fees as related to intoxicating liquors and inspection fees as related to other articles of commerce. No such distinction exists. To tolerate it and to confer upon the state an unbridled license to fix charges at its mere whim and caprice and without reference to the cost of the inspection would be to permit the State to accomplish indirectly what it undoubtedly has not the power to do openly and directly. It could bring about exactly the condition pointed out by Justice Catron, and under the guise of an inspection measure so burden interstate commerce in the

commodity as to make it impossible. The premise of the Court, therefore, being at fault, its conclusion in support of that branch of its opinion is likewise erroneous.

Intoxicating liquors, then being subjects of lawful commerce in the State of Missouri, the State in imposing an inspection fee under its reserved power, is bound by the rule that the charge for such inspection must bear a just and reasonable relation to the cost of making the same. In Hopkins vs. U. S., 171 U. S., 578, 597, Mr. Justice Peckham said :

"In all the cases which have come to this Court, there is not one which has denied the distinction between a regulation which directly affects and embarrasses interstate trade or commerce and one which is nothing more than a charge for a local facility provided for the transaction of such commerce. On the contrary, the cases already cited show the existence of the distinction and the validity of a charge for the use of the facility."

"No State can interfere with interstate commerce through the imposition of a tax by whatever name called, which is, in effect, a tax for the privilege of transacting such commerce."

Adams Express Co. vs. Ohio, 166 U. S. 185, 218.

But in the light of the recent cases of

Telegraph Co. vs. Borough of New Hope, 187 U. S. 419 ;

Atlantic etc. Telegraph Co. vs. Philadelphia, 190 U. S. 160 ;

Postal Telegraph Co. vs. Bourough of New Hope 192 U. S. 55.

Postal Telegraph Co. vs. Taylor, Id. 64.

The proposition must be accepted as authoritatively settled against the right of the State of Missouri to impose, under the guise of an inspection fee, a burden upon inter-

state dealing in this commodity representing, approximately, thirty times the cost of making such inspection. In the last mentioned case this Court held:

"A license fee cannot be imposed by ordinance of a municipality for purposes of inspection on telegraph companies doing an interstate business which is so far in excess of the expenses of inspection that it is plain that it was adopted, not to repay such expenses, but as a means for raising revenue."

There, extravagant as the charge was, compared with the amount which might have been or could possibly be incidental to the inspection, the disparity was not so gross as in the case at bar. On page 72 the Court said:

"When we come to an examination of the grounds upon which this kind of a tax is justifiable, and when we find that in this case each one of these grounds is absent, how is it possible to uphold the validity of such an ordinance? To uphold it in such a case as this, is to say that it may be passed for one purpose and used for another; passed as a police inspection measure and used for the purpose of raising revenue; that the enactment as a police measure may be used as a mere subterfuge for the purpose of raising revenue, and yet because it is said to be an inspection measure, the Court must take it as such and hold it valid, although resulting in a rate of taxation which if carried out throughout the country would bankrupt the company were it added to the other taxes properly assessed for revenue and paid by the company. It is thus to be declared legal upon a basis and for a reason that do not exist in fact. * * * Under such facts it would seem to be plain that the ordinance was adopted as a means for the raising of revenue, and not to repay expenses for inspection.

"Judging the intention of the borough by its action it did not intend to expend anything for an inspection of the poles and wires, and did intend to raise revenue under the ordinance. Courts are not to be deceived by the mere phraseology in which the ordinance is couched when the action of the borough set forth in the affidavit shows con-

clusively that it was not passed to repay the expenses or provide for the liabilities incurred in the way of inspection or for proper supervision."

Here the extent of the service to be performed by this small congress of inspecting officers of the State, under the statute as construed by the lower court, consists in affixing to the package a stamp or label—for all practical purposes no inspection at all—and which represents, practically, no cost, as compared with the revenue exacted.

NO PRACTICAL INSPECTION IS FURNISHED BY THE ACT.

And this brings us to the second objection which we have to this act, heretofore adverted to, namely: That as construed by the Court it is no inspection at all. The mere receipt of an affidavit of the importer, or someone else having knowledge of the beer, or who avers that he has knowledge, of the ingredients of the beer, is the beginning and the end of the inspection permitted by the statute. The Court was driven, by the force of the otherwise tenable objections to the act, to thus minimize the duties and powers of the executive officers of the State. But it is to be observed that there is not lodged in the officers the power of revision of the truth of these affidavits nor of excluding the commodity if it does not come up to the requirements of the act. The entire penal provisions of the statute are to be found in Section 10, and these penalties are confined to imprisonment and forfeiture of license, not for the introduction or sale of impure beer, but for failure to produce the affidavit and to pay the fees. No penalty is affixed for the making of a false affidavit, nor, as we have suggested, is any power reposed in any department of the State to prevent the vending of beer which may be absolutely unwholesome and unfit to drink.

It will be observed from the provisions of Section 5 of the act that there is no *entrepot* designated or location within which the article brought into the State shall pass,

thus leaving the entire borders of the State open for entry and thus manifestly making it wholly impossible for an inspector to know anything of the presence of the article in the State. Neither is there any requirement that he shall be informed as to where it is or where it may be inspected. While an affidavit is required from the party who brings the article into the State, or offers to sell it within the State, there is manifestly no just relation between the act of bringing in and the ultimate purpose of the affidavit, for the apparent reason that the affidavit may be made as to the intention to bring in, or as to an article already within the State, and yet the article itself may in no way relate to or be identified with the conclusion of the affiant in his affidavit, and there is no way by which the inspector can know that the affidavit sent in has any relation to the article actually brought into the State.

The forced construction which was placed by the learned Judge upon this statute in order to save its face among legislative enactments, strongly exemplifies the absurdity of dignifying this as an inspection measure. Under such construction the inspector may, after receipt of an affidavit, "label the package," which is defined by the Court to mean the outer receptacle or the original package which incloses the commodity, as shipped into the State. In the case of bottled goods, therefore, it would be a wooden box, probably closed. The inspector, the Court holds, would have no right to pry open this box to satisfy himself that it did, in fact, contain only the article described in the affidavit. His inspection must, perforce, be confined to a visual examination of the pine-board covering submitted to him by the accommodating vendor. To seriously characterize as an inspection of beer the act of an officer in licking a label and sticking it on a wooden box, without even a permissive sight of the beer itself, is the reduction of all absurdities.

Being thus shorn of all power of inspection and of all right to accomplish any actual work in securing a wholesome product, it may readily be conceived that the inspector and his deputies would become exceedingly lax in the performance of those purely ornamental functions with which they are endowed by the statute.

Let us suppose a practice that is permissible under this act, and which is best illustrated by the practice actually adopted by the inspector: A foreign brewer at Milwaukee, Wisconsin, desires to ship to Kansas City, Missouri, to be sold by his agents after arriving there, one thousand barrels of bottled beer. He may make affidavit in the State of Wisconsin and forward it to the inspector at his office in Missouri, stating that he has shipped the thousand barrels of bottled beer into the State of Missouri and will offer them for sale, and at the same time transmit to the inspector the amount of the inspection fees demanded, and the inspector in turn forwards to whomsoever the manufacturer requests, the labels to be placed upon the barrels, and they are actually placed thereon by the manufacturer or his agent. How can it be said that any inspection has been made which meets any of the requirements or purposes of inspection laws? It will be noticed that this act is careful in its silence upon the question as to what the inspector shall do in the way of inspecting. The act of putting the labels upon the package is altogether possible, but it certainly could not lie in his power, even if the act had so provided, to break open the bottles or to open the keg containing beer, for the purpose of extracting the contents for inspection. This would, obviously, ruin and destroy the article itself, and thus we find that the act is careful to not advise the inspector as to the character of his inspection. The most that could be claimed for it, even if the inspector actually discommoded himself (which he does not do), to the extent of going and looking at the package, barrel or case, would be a mere empty formality, and of no practical use, because

of absence of power to make actual inspection. Would this be regarded as an inspection such as a police regulation would require? Certainly not. Therefore, it is apparent that the object of this act was to put revenue into the State treasury and to disguise it by calling it "inspection," when it was known and understood that no inspection was expected or intended.

The unquestioned result of this pretense of inspection is, in its last analysis, to require the party who offers the commodity for sale to be the sole judge of the subject and to be the sole judge as to whether his conclusion is correct, namely: that no material other than pure hops, extract of hops, or pure barley, malt or wholesome yeast or rice, was used in the manufacture; and if his conclusion should satisfy him sufficiently to warrant the making of an affidavit, the inspection is complete and nothing remains for the inspector to do but go through the form of seeing that the label is placed upon the package, or, perhaps, perform the laborious act of actually looking at the barrel or package containing the article. If this be inspection then it would be difficult to define the antithesis of inspection.

In short, there is not an attempt, even, within the entire texture of this statute to secure to the public the commonly accepted end and object of all inspection laws. The lower court itself was so impressed with the illogical and absurd result of defining this as an inspection measure, that it was moved to observe, "I suspect that the legislature was more concerned in the matter of obtaining fees to swell the exchequer of the State than in the protection of the people who might drink beer."

The Court, however, notwithstanding the plain and palpable evasion and equivocation manifested by the statute, proceeds to say that, granted this to be true, it does not lie in the mouth of the foreign brewer to complain. But in assuming this position the Court misses, as it seems to us, the touchstone in this case. We complain not because the

State has laid its hand with gentleness upon the foreign brewer in so far as making a physical examination of his product is concerned. Nor do we complain particularly because of the fact that an affidavit may be accepted in lieu of inspection, without punishment or penalties for perjury. The ground of the complaint is that under a bill disguised and sugar-coated in these particulars as an inspection measure, but bearing no just relation to the object of inspection, an extravagantly large tax is laid upon our commerce. And it does not answer the argument of the complainant to say that the legislature has so minimized the details of the inspection, so-called, as to make it, to all practical intents and purposes, no inspection at all. If the act as construed and enforced by the State authority is not calculated to secure the results to be attained by proper inspection, then it furnishes no pretext for imposing this large tax upon the foreign brewer. *The obligation of the brewer to pay an inspection fee at all cannot arise except in the event of inspection in fact.* No non-resident trader in any commodity is obliged to pay tribute to the States for immunity of his products from inspection.

So far then from weakening the position of the complainant, it seems to us that the suggestion of the learned Judge strongly emphasizes the insincerity of the claimed purpose of this legislation and shows the justice of our complaint. How can that be said to be an inspection law, or a sanitary law, which does not secure information as to the wholesomeness of the commodity, provide for its exclusion if found to be unwholesome or affix a punishment for the false representation of quality or condition or for the sale of an impure and adulterated article? Can it be seriously contended that a State has any sincere purpose to protect the public welfare in this behalf by the passage of a law which wholly omits these safeguards and means of rendering the statute effective, and leaves its operation dependent entirely upon the good faith and honesty of those who may happen to be engaged in the business?

In Vance vs. Vandercook Co. (No. 1) 170 U. S. 438, 456, it was urged that the sending of a sample of wine to the state officer in advance of shipment and as a prerequisite for obtaining permission to make a shipment, should be upheld as an inspection law passed for the purpose of guaranteeing the purity of the product, and therefore should be construed to be a valid manifestation of the police power of the State. The Court disposed of this contention in the following language (p. 456):

"But it is obvious that this argument is unsound, as the inspection of a sample sent in advance is not in the slightest degree an inspection of the goods subsequently shipped into the State. The sample may be one thing and the merchandise which thereafter comes in another. It is hence beyond reason to say that the law provides for an inspection of the goods shipped into the State from other States, when in fact it exacts no inspection whatever."

By parity of reasoning it might have been said in that case that the good faith of the shipper was pledged to maintain the quality of the sample in the subsequent shipment. Certainly such observation is as pertinent to the South Carolina statute as to the Missouri act, as each is made entirely dependent for effectiveness upon the honesty and good faith of the shipper. Notwithstanding, this Court refused to consider the act as an inspection measure. The Court, doubtless, proceeded upon the obvious principle that when the State enacted a statute with the real object of insuring purity of liquors manufactured or sold in the State, it would furnish means more calculated to accomplish that result than a mere appeal to good faith and integrity of the foreign dealer.

As was said by this Court in Mugler vs. Kansas, 123 U. S. 623, 661: "If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights

secured by the fundamental law, it is the duty of the Courts to so adjudge and thereby give effect to the Constitution."

Said this Court in the later case of Scott vs. Donald, 165 U. S. 93:

"In Railroad Co. vs. Husen, 95 U. S. 465, the validity of an act of the State of Missouri, which forbade the introduction into the State of any Texan or Mexican cattle between the months of March and December of each and every year, was considered.

"It was contended on behalf of the law that it was valid as a quarantine or inspection law, as its purpose was to prevent the introduction of cattle afflicted with contagious diseases. But the Court pointed out that no provision was made for the actual inspection of the cattle, so as to secure the rejection of those that were diseased, but that all importation of cattle, whether sound or diseased, was forbidden for long periods; and it was held that the statute was void as a plain intrusion upon the exclusive domain of congress."

In Reid vs. Colorado, 187 U. S. 150, 151, this Court said:

"Certain principles are well settled by the former decisions of this Court. One is that the purpose of a statute, in whatever language it may be framed, must be determined by its natural and reasonable effect. Henderson vs. Mayor of New York, 92 U. S. 259, 268. Another is that a State may not, by its police regulations, whatever their object, unnecessarily burden foreign or interstate commerce. Railroad company vs. Husen, 95 U. S. 465, 472. Again, the acknowledged police powers of a State cannot legitimately be exerted so as to defeat or impair a right secured by the National Constitution, any more than to defeat or impair a statute passed by Congress in pursuance of the powers granted to it. Gibbons vs. Ogden, 9 Wheat. 1, 210. Missouri, Kansas & Texas Ry. Co. vs. Haber, 169 U. S. 613, 625, 626, and authorities cited."

The Court held that the right of one to introduce into a State live stock infected with a communicable disease

is not protected or guaranteed by the Federal Constitution. But none the less clearly held that the State cannot, under the guise of protecting against the introduction of such infected animals, unreasonably burden shipments of live stock into and through Colorado. In other words, the means employed must not go beyond the necessities of the case. So here, the right of the State founded upon its police power is to secure the people against impure and adulterated beer. The means to be employed must be consonant with the end to be attained. What are these means? Obviously and primarily they must be such as will secure to the executive officers of the State, information as to the quality of the commodity, which, we submit, can only be obtained by a test or an inspection. Then, as a necessary correlative of that right, there must be a further power to prohibit the sale of the condemned articles. Neither of these rights—absolutely necessary to the accomplishment of the end professed—is furnished by this statute. Finally, having provided for the means of inspection, the State may then impose a sufficient burden, in the way of charges, to meet the cost of the work. But under the admitted facts in this case it has exacted of these brewers thirty times the combined salaries and expenses of this small army of officials whom it has created, without the power of accomplishing anything under the professed objects of the legislation. There can be no other conclusion than that this act wholly fails to meet the requirements of an inspection measure.

THE ABSENCE OF UNFAIR DISCRIMINATION AGAINST NON-RESIDENT DEALER IS IMMATERIAL.

Neither is it any answer to the position of the complainant to say that in respect to the operation of the act there exists no discrimination adverse to the complainant and other non-residents of the State in favor of the domestic manufacturers and dealers. If the burden is imposed upon

interstate commerce, without justification, it is none the less invalid because it may rest alike upon those within and without the State.

"A burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute." Minnesota vs. Barber, 136 U. S. 326.

Citing:

Robbins vs. Shelby Taxing District, 120 U. S. 489, 497;

Case of the State Freight Tax, 15 Wall. 232.

III.

THIS COURT NOT BOUND BY THE DECLARATION OF THE SUPREME COURT OF MISSOURI THAT THE ACT IS AN INSPECTION MEASURE PASSED PURSUANT TO THE POLICE POWER OF THE STATE.

The Supreme Court of the State, by the narrow margin of four to three, declared the act to be an inspection law and to be within the proper exercise of the police power of the State. The learned District Judge conceived himself to be bound by this judicial declaration, and therefore to be not at liberty to express his independent judgment upon this subject. We respectfully suggest that in this he was in error. The question is not to be confused with the rule making the construction of State statutes by the State Courts binding upon the federal judiciary, because the application by the State tribunal of facts to the act or a judicial declaration of its purpose or object is not a construction of the act within the terms of that rule. The distinction is well illustrated in the case at hand. The Supreme Court has held that the inspector does not possess authority to break open packages or bottles and physically test the beer in its then condition. This construction of the

power of the inspector, under the statute, is binding on the federal court. But it is a totally different thing when it comes to defining the legislative purpose evidenced by the act, as distinguished between a revenue and inspection measure. That is a subject about which this Court must necessarily express an independent judgment. It cannot be bound by the terms which the State Court may be pleased to apply to the legislative intent without losing its power of protecting against an encroachment upon federal rights.

"This Court is not bound by the decision of the highest Court of the State in which such a tax is authorized and imposed, that its authorization and imposition are an exercise of the police power, and not of the taxing power."

Brennan vs. Titusville, 153 U. S. 289.

In Scott vs. Donald, 165 U. S. 100, this Court put at rest any doubt upon its right of independent judgment and declared:

"The question whether a given State law is a lawful exercise of the police power is still open, and must remain open, to this Court."

THE COURT WILL EXERCISE ITS INDEPENDENT JUDGMENT AS TO MEANING AND EFFECT OF STATUTE.

Said this Court in Postal Telegraph Co. vs. Taylor, 192 U. S. 64:

"Courts are not to be deceived by the mere phraseology in which an ordinance may be couched, when it appears conclusively that it was passed for an unlawful purpose and not for the one stated therein."

In People vs. Compagnie Générale Transatlantique, 107 U. S. 59, 63, it is most aptly said:

"A State cannot make a law designed to raise money to support paupers, to detect or prevent crime, to guard against disease, and to cure the sick, an inspection law,

within the constitutional meaning of that word, by calling it so in the title."

"In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect; and the presumption that it was enacted in good faith, for the purpose expressed in the title, cannot control the determination of the question whether it is, or is not, repugnant to the constitution of the United States."

Minnesota vs. Barber, 136 U. S. 313.

In Brennan vs. Titusville, (*supra*) this Court said (p. 301):

"Because a license may be required in the exercise of the police power, it does not follow that every license rests for its validity upon such police power. A State may legitimately make a license for the privilege of doing a business one means of taxation, and that such was the purpose of this ordinance is obvious, not merely from the fact that in the title it is declared to be for 'general revenue purposes,' but also from the further fact that, so far as we are informed by any quotations from or references to any part of the ordinance, there is no provision for any supervision, control or regulation of any business for which by the ordinance a license is required. In other words, so far as this record discloses, this ordinance sought simply to make the various classes of business named therein pay a certain tax for the general revenue of the city."

"The fact that the State or the Court may call the business of an individual, when employed by more than one person outside of the State, to sell their merchandise upon commission, a 'brokerage business,' gives no authority to the State to tax such a business as complainants'. The name does not alter the character of the transaction, nor prevent the tax thus laid from being a tax upon interstate commerce. As was said by Mr. Justice Bradley, in the Robbins case, *supra*, 'The mere calling the business of a drummer a privilege cannot make it so.'"

Stockard vs. Morgan, 185 U. S. 36.

The Supreme Court of Missouri itself has recognized that a tax is not to be denied its legal significance because denominated something else in the law enacted. In City vs. Spiegel, 75 Mo. 145, the Court said (146):

"Is, then, the license fee a tax within the meaning of the third section, *supra?* And does the ordinance which authorizes its collection discriminate in favor of some subjects and against others of the same class? That the license fee is a tax when imposed for the main purpose of revenue, is established by abundant authority. Dillon Munic. Corp. par. 768; Ward vs. Maryland, 12 Wall. 418; Cooley's Const. Lim. pp. 201, 494; North Hudson vs. Hoboken, 41 N. J. L. 71; Glasgow vs. Rowse, 43 Mo. 479; Cooley on Taxation, 403, *et seq.*, and it is competent for the Courts to make examination and see if, under a mere power to license, the power of taxation for revenue is exercised. Burlington vs. Ins. Co., 31 Iowa 102; Muhlenbrinck vs. Commissioners, 42 N. J. L. 364; s.c., 36 Am. Rep. 518. In this case it is apparent at first blush that the license fee is imposed for the purpose of revenue. That such fee is imposed for the purpose of regulation does not deprive it of the salient characteristics of a tax."

It therefore is clearly the duty of this Court to determine for itself the rightfulness of the exercise of the police power attempted by the legislature of Missouri, and it is to be governed in its decision by the manner in which the act, as construed by the State Court, is administered, and the result of such administration upon the business of the non-resident dealer. It is not to be deceived as to the real object and purpose of the statute by any false label in the title of the act. It is to determine the legal conclusion deducible from those facts and circumstances, irrespective of the judgment of the State Courts upon the question of the propriety of the legislation or the means and purposes in view when it was passed. If it appears to this Court that the act has no reasonable relation to the police power of the State, but that the title and avowed purpose are a mere

cloak for the real object of the legislation, and that the act as construed and administered is an unreasonable burden upon interstate commerce, then this Court will so declare.

IV.

THE WILSON BILL (ACT OF CONGRESS OF AUGUST 8, 1890,) DOES NOT AUTHORIZE A STATUTE LIKE THE ONE IN QUESTION.

In view of the many decisions of this Court sustaining the principles adverted to in the earlier portions of this argument, there would seem to be no reasonable room for controversy that the Missouri statute, in so far as its application to the business of the complainant is concerned, is an invasion of rights secured by the Federal Constitution, unless the power to pass such a statute has been conferred upon the State by the Wilson bill. As applied to any other kind of merchantable commodity there can be no doubt that the act is an unreasonable burden upon interstate commerce and cannot be sustained as being within the police power of the State. Does the Wilson bill deny to the complainants, as dealers in beer, the same protection? The Supreme Court of Missouri, without argument or any extended discussion, held that it did. State vs. Bixman, 162 Mo. 38. The Court cites as authority for its contention *In Re* Raher, 140 U. S. 545; Rhodes vs. Iowa, 170 U. S. 412, and Vance vs. Vandercook, 170 U. S. 445.

Before proceeding to a discussion of this act and the authorities, it may be useful for us to first state what we believe to be the effect of the Wilson bill upon the power and right of States in dealing with intoxicating liquors, as will be gathered from the decision of this Court.

The act did not create a right in the States, nor delegate to them a power which they did not theretofore possess, but simply removed an impediment to the exercise of an existing power. This power of the State, to which alone

the right to enact legislation of this character is referable, is the police power. The effect of the act of Congress is then to "remove an impediment to the enforcement of the State law passed in pursuance of its police power, in respect to imported liquors, at a time earlier than such State laws would otherwise be enforceable." Beer still remains an article of commerce and the right to make and vend it is recognized, and the State may interfere with the interstate dealing in the commodity only in virtue of a statute enacted pursuant to its police power. In Missouri, where it is a lawful subject of sale by licensed vendors, the State does not possess the power, while such right exists, to deny the privilege of commerce and traffic altogether in the article, or to interfere or hamper the same beyond the necessary exercise of its power of regulation and control. The statute of Missouri in question, therefore in order to be upheld, must be a statute passed pursuant to its reserved right of control. Its power in that behalf being neither diminished nor augmented by the Wilson bill, the question of the rightfulness of its attempted exercise is to be determined by the same considerations which would have governed if under investigation before the Wilson bill was passed. In other words, it must be determined upon entirely independent grounds, and upon the same principles as when applied to any other legitimate article of commerce. We, therefore, contend that the Missouri act is not a lawful exercise of the police power of the State, and if it is not, the Wilson bill does not deprive the complainant of the protection secured to it by the Federal Constitution. Let us examine the statute and the decisions a little more fully.

The federal statute is as follows:

"That all fermented, distilled or other intoxicating liquors or liquids transported into any state or territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such state or territory be subject to the operation and effect of the laws of such state or

territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such state or territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." 26 Stat. 313, c. 728.

The act itself would seem to remove all room for fair controversy as to its meaning. It provides that intoxicating liquors upon arrival in the state or territory shall be subject to the operation and effect of the laws of the state or territory "*enacted in the exercise of its police powers.*"

In Bowman vs. Chicago etc. Ry. Co. 125 U. S. (*supra*) it was decided that the State did not possess the power to interfere with the interstate shipment until the point of arrival and delivery to the consignee. The question was reserved whether such shipment continued to be protected by the interstate commerce clause after delivery to the consignee and up to and including the time of sale in the original package by the owner, to whom they had been consigned. Subsequently in Leisy vs. Hardin, 135 U. S. 100, the question reserved in the Bowman case arose for adjudication, and it was then held that the right to sell imported merchandise in the original package, free from interference by the State, was protected by the constitution, as up to such sale, the goods brought into the State were not commingled with the general mass of property in the State. Both of these cases were decided before the act of 1890. Later in Rhodes vs. Iowa, 170 U. S. 412, the exact question involved in the Bowman case was again presented for consideration, it being claimed that the act of 1890 had the effect of changing the rule announced in the prior decision. This Court, however, held the contrary and decided that notwithstanding the act of 1890 an interstate shipment of intoxicating liquor could not come within the operation of the laws of Iowa until its delivery to the consignee, and

the scope of the decision is concisely stated in the succeeding case of Vance vs. Vandercook, 170 U. S. 446, as follows:

"In the second case the same view was taken of the statute, and although it was decided that the power of the State did not attach to the intoxicating liquor when in course of transit and until receipt and delivery, it was yet reiterated that the obvious and plain meaning of the act of Congress was to allow the State laws to attach to intoxicating liquors received by interstate commerce shipments before sale in the original package, and therefore at such a time as to prevent such sale *if made unlawful by the State law.*"

In the case last mentioned the Court deems it proper to state three propositions, which are conceded to be elementary and to be entirely concluded by authority of previous decisions of the Court, as follows:

"(a) Beyond dispute the respective States have plenary power to regulate the sale of intoxicating liquors within their borders, and the scope and extent of such regulations depend solely on the judgment of the lawmaking power of the States, provided always, they do not transcend the limits of State authority by invading rights which are secured by the constitution of the United States, and provided further, that the regulations as adopted do not operate a discrimination agaist the rights of residents or citizens of other States of the Union.

"(b) Equally well established is the proposition that the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the constitution of the United States to Congress, and, hence, that a State law which denies such a right or substantially interferes with or hampers the same, is in conflict with the constitution of the United States.

"(c) It is also certain that the settled doctrine is that the power to ship merchandise from one State into another carries with it, as an incident, the right of the receiver of the goods to sell them in the original packages, any State

regulation to the contrary notwithstanding, that is to say, that the goods received by interstate commerce remain under the shelter of the interstate commerce clause of the constitution, until by a sale in the original package they have been commingled with the general mass of property in the State.

"This last proposition, however, whilst generically true, is no longer applicable to intoxicating liquors, since Congress in the exercise of its lawful authority has recognized the power of the several States to control the incidental right of sale in the original packages, of intoxicating liquors, shipped into one State from another, so as to enable the States to prevent the exercise by the receiver, *of the accessory right of selling* intoxicating liquors in original packages except in conformity to lawful State regulations. In other words, by virtue of the act of Congress the receiver of intoxicating liquors in one State, sent from another, can no longer assert a right to sell in defiance of the State law in the original packages, because Congress has recognized to the contrary."

And the Court further remarked at pages 445-6 that the scope and effect of this act of Congress have been settled in *In Re* Rahrer, 140 U. S. 545, and Rhodes vs. Iowa, 170 U. S. 412, declaring the purpose of Congress in passing the law to have been to allow State laws to operate on liquor shipped into one State from another, so as to prevent the sale in the original packages in violation of the State laws.

The right, then, which was taken from the interstate dealer by the withdrawal of the impediment to the operation of the police powers of the State, is the right to sell in the original packages. Only that and nothing more. He may ship his goods, without molestation, into or through the State. Up to the point of their delivery to the consignee they are free from interference by the State's authorities. The article is none the less a legitimate subject of commerce because of the act of Congress and to support its

interference with a right of sale, the State legislation must flow from its reserve police power. It is true, of course, that the right of the State founded upon this power, is extremely broad and elastic and it extends even to the right of an absolute prohibition of the sale altogether. But there does none the less exist this important limitation, namely: That however varied the manifestations of the power may be, they must, after all, relate to and regulate or control the introduction and sale of the commodity; as for example, rules for inspection and license fees, control of the place and hours of sale, all of which are within the realm of such power. But in the language of this Court in Scott vs. Donald, 165 U. S. 91:

"So long, however, as State legislation continues to recognize wines, beer and spirituous liquors as articles of lawful consumption and commerce, so long must continue the duty of the Federal Courts to afford to such use and commerce the same measure of protection, under the constitution and laws of the United States, as is given to other articles."

This same thought runs throughout the case of Vance vs. Vandercook. Thus, at page 448, it was said:

"The entire context of the act manifests the purpose of Congress to give to the respective States full legislative authority, both for the purpose of prohibition as well as for that of regulation and restriction, with reference to the sale in original packages of intoxicating liquors brought in from other States."

And again, on page 447:

"The right of a State to forbid the sale of liquors in the original packages being clear, it results that a State law cannot be void because in excess of State authority, when it is but the execution of a power lawfully vested in the legislature of the State."

In Reymann Brewing Co. vs. Brister, 179 U. S. 445, 455, this Court said, referring to the Dow law of Ohio:

"As this statute subjects intoxicating liquors imported into a State to the operation and effect of the laws of such State only when enacted in the exercise of its police powers, it is contended that such is not the character of the Dow law; that as it contains no prohibition upon the manufacture or sale of intoxicating liquors, and only purports to regulate the trafficking therein, it is not a police measure."

The Court analyzed the Ohio statute and found that the objection to it was not tenable and held that the Dow law was a proper exercise of police power of the State. But the entire logic and force of the opinion sustains our contention of the necessary scope and purpose of the Wilson bill.

Mr. Justice Miller in his work on the constitution, page 676, after this act took effect, said in reference to it:

"Such liquors introduced into the State from another State, whether in original packages or otherwise, become subject to the operation of its then existing laws, enacted in the exercise of its police powers."

This, likewise, is the view which has obtained in the Circuits in respect to this act. Pabst Brewing Co. vs. Terre Haute, 98 Fed. 330, presented an ordinance requiring the payment of a license fee of $1,000 per annum upon a depot or agency for the storage of beer imported from another State. After discussing all of the other questions in the case, the Court held, referring to the decisions of this Court, (p. 333):

"The constitutional power of Congress to enact the statute in question was upheld, and it was declared to have been the purpose of Congress to allow the laws of the State to operate on intoxicating liquors shipped from one State into another, so as to prevent their sale in the original packages in violation of any police law of the State."

On page 334 the Court then inquired whether the ordinance was a valid exercise of the police power, and

disposed of the claim against the contention of the city. Said the Court:

"The controlling question, then, is this: Is the law authorizing the city of Terre Haute by ordinance to impose a license of $1,000 per annum upon a depot or agency for the storage of beer imported from another State while in original packages enacted as a police or revenue regulation? The right of the shipper of beer to sell the same in the original packages, 'shall, upon arrival in such state or territory, be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers.' Was the statute of this State authorizing the imposition of the license upon depots or agencies for the storage of imported beers in original packages enacted in the exercise of its police power, or under its power of taxation? If under the power of taxation, it would be invalid as to citizens of other States, even though valid as to citizens of this State. In Brennan vs. City of Titusville, 153 U. S. 289, 301, 14 Sup. Ct. 832, 38 L. Ed. 719, the Supreme Court say:

"'Because a license may be required in the exercise of the police power it does not follow that every license rests for its validity upon such police power. A statute may legitimately make a license for the privilege of doing a business one means of taxation: and that such was the purpose of this ordinance is obvious, not merely from the fact that in the title it is declared to be for general revenue purposes, but also from the further fact, so far as we are informed by any quotations from or references to any part of the ordinance, there is no provision for any supervision, control, or regulation of any business for which, by the ordinance, a license is required. In other words, so far as this record discloses, this ordinance sought simply to make the various classes of business named therein pay a certain tax for the general revenue of the city.'

"The Court held the ordinance void on the ground that it was enacted under the taxing, and not under the police, power of the State, affirming the doctrine of the case of Ficklen vs. District, 145 U. S. 1, 12 Sup. Ct. 810, 36 L. Ed. 601:

"'That no State can levy a tax on interstate commerce in any form, whether by way of duties laid on the transportation of subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on.'"

And on page 335 it said:

"The power to tax is distinct from the police power. The purpose of the former is revenue, of the latter regulation. Any statute or ordinance enacted under the police power of the State must have some relation to the peace, good order, health, morality or security of the people. It must contain some provision having reference to the supervision, control, or regulation of some act or thing which may in some way injuriously affect the peace, good order, health, morality, or safety of society. The ordinance in question contains no provision for any supervision, control, or regulation of the business of handling, storing or selling beer, nor any provision for the supervision, control, or regulation of the depot or agency in which it is stored. Exacting a license from the owner of the depot or agency where beer is stored does not, so far as the Court can see, have any necessary relation to the peace, good order, health, morality, or security of society, in the absence of any provision for the control, regulation, or supervision of such depot or agency. In other words, so far as this record discloses, this ordinance seeks simply to make the depot or agency where beer is stored pay a tax for the general revenue of the city, without any attempt to control, regulate, or supervise either the depot or agency, or the custody or sale of the beer."

So likewise Judge Simonton, in *Ex parte* Jervey, 66 Fed. 957, held:

"The Wilson act, passed by Congress in August, 1890, merely operates to subject liquors brought into a State to the police power thereof, whether in the original packages or not, and it gives the State no authority to impose penalties upon persons who bring liquors into a part of the State without attempting to unload them from the vessel."

Judge Hook, *In re* Bergen, 115 Fed. 339, 342, said of this act:

"It simply removed an impediment to the operation of the police laws of the State, respecting the imported property, which theretofore existed by reason of the silence of Congress upon that subject."

See also:

Minneapolis Brewing Co. vs. McGillivray et al, 104 Fed. 258.

It must be borne in mind that the goods of the non-resident owner, at the time they are impressed with the payment of this inspection fee, have not become a part of the general property of the State. The interstate commerce is affected by the statute long before the commodity is in the act of being sold or even ready for sale. The statute operates upon it immediately upon its reaching the borders of the State. The goods are in the hands of the agent of the non-resident owner and to all intents and purposes are exactly in the same position and relation to the laws of the State of Missouri, as if they were still in the warehouses where they were originally manufactured. There is no prohibition against their introduction and sale. Being, therefore, clearly interstate merchandise, lawfully brought into the State and not commingled with the merchandise of the State, the effect of the statute is not to regulate the sale either in original packages, or otherwise, but is rather an exaction of a tax upon the business of dealing in an interstate commodity, under the guise of an inspection law. This makes it a palpable regulation of that commerce, and it would be no more a regulation repugnant to the constitution if the officers of the State of Missouri should appear in Milwaukee or wherever else the beer may have been manufactured, and should attempt to exact the same fees there.

But it may be suggested that inasmuch as the States

have the power of prohibiting the liquor traffic altogether, upon the principle that the greater includes the less, they may do anything short of prohibition and this statute is to be sustained on analagous grounds. In other words, that the State may impose such burdens on the commerce as it pleases, and the interstate dealer is in no position to complain. It is to be conceded that this argument has a captivating and plausible sound, but a study of it proves it to be fallacious and that it misses the point involved. In the first place the act of prohibition is along the line of regulation. It is, in fact, one method of dealing with the liquor problem which confronts the municipalities, but even there it is a regulation of the subject of sale of the article. It presents a clear case of the exercise of the police power of the State, and the Wilson bill has removed the impediment to its exercise even to this extreme limit. In this particular lies one of the distinctions to the Missouri statute. This statute is not a regulation of liquor traffic and sale at all. It bears no analogy to the exercise of the power of prohibition. It proceeds from an entirely different source of power, namely, the power of taxation. It is not a difference in degree, then, but is a totally dissimilar species of legislation than that involved in the prohibitory laws or any other regulating statutes. An analogy to the exercise of the power of prohibition would be presented by any system of licensing fees and requirements, but no such analogy can be traced in this statute.

But over and beyond this, there is a broad and plain distinction impressed upon the commodity itself by the attitude adopted toward it by the State as to its admissibility as a subject of commerce. The States have a right to determine this question. In the prohibition States, liquor is taken out of the realm of commerce. It ceases to be a merchantable commodity within the meaning of the federal constitution, as generally applied and as related to

other products. This is accomplished, not by the inaction or silence of the States upon the subject, but by affirmative legislation. In the absence of all legislation, it could be dealt in with absolute freedom from all restrictions. So, in States like Missouri, where it is recognized as a legitimate and proper subject of commerce, it is not to be so distinguished from other commodities in this respect. This Court, in Scott vs. Donald, (*supra*), called attention to this distinction and stated that it was important to observe that the South Carolina statute did not purport to prohibit either the importation, the manufacture, the sale or the use of intoxicating liquors. The States cannot blow hot and cold at the same time upon this subject. They may not daily recognize and permit intoxicating liquor to be dealt in and treated as an ordinary commercial product and at the same time deny to it the same protection in regard to inspection measures furnished by the federal constitution to other merchantable commodities.

It is a part of the public history of the Wilson bill that it was passed as the result and to obviate the effect of certain decisions of this Court, namely, Leisy vs. Hardin and Bowman vs. Railroad Co. The States of Iowa and Kansas sought to wholly prohibit, within their borders, the sale of all forms of intoxicating liquors, except for medicinal, mechanical and scientific purposes. An unsuccessful effort had been made to have this Court declare these prohibitory laws invalid. In Mugler vs. Kansas, this Court held the statute of Kansas, so far as its domestic or interstate commerce was concerned, to be within the due exercise of the reserved police power of the State; but the result of that decision was very much modified in its practical operation by the circumstance that liquors might still be sent into the State from other States, and sold in original packages, with impunity. *It was to emancipate the States from the operation of the commerce clause of the federal constitution upon the police power of the State within its legitimate limits that*

the Wilson bill was passed, and for no other purposes whatsoever. The statute did not increase the police powers of the State. Its only effect is, as declared by this Court many times, to give free play to those powers that already existed in the States. Whether the State, therefore, deals with this subject in the form of absolute prohibition or by any regulation less than that, the imported commodity being intoxicating liquors, is impressed with the force of State regulation the moment it enters the State; but such regulation must be within the legitimate scope of the police power. *The rule for determining the limits of the proper exercise of that power is the same now as it was before the Wilson bill was passed.* If, under such test, it transcends the power of the State as a police measure, it is still beyond the right of the State to enforce it. It is the *rightful* exercise of the police power that the Wilson bill permits to the States, and not a *wrongful* exercise.

It must, therefore, we think, be accepted as conclusively settled by the federal decisions, that to support the statute in question it must be founded upon the rightful exercise of the police power of the State, a power always reserved to the States and never surrendered to the federal government. The States do not possess an unbridled liberty of action yet. They may not, while recognizing these commodities as legitimate subjects of commerce, so intrude themselves into the doing of the business as to make it impossible. They may not, under the guise of a police regulation, impose burdens upon commerce which have no just relation to the reserved police power. The commodity, being thus recognized and permitted in the State, is entitled to the federal protection accorded to other articles of interstate commerce, save and alone that it becomes subject to the State authority of regulation at an earlier period of time than any other article of commerce. However broad and plenary may be the power of the State in the way of controlling the traffic, when it comes to inspection of interstate shipments, it does

not possess a power like that attempted to be exerted here.

Tried by these principles, then, determinative of the rightful exercise of power, this statute must fall. It is not the proper exercise of the police power of the State. It is not an act regulating the manufacture and sale of intoxicating liquors. It is not an inspection measure, because it does not inspect. It wholly fails in the accomplishment of any public good in the way of securing pure and unadulterated beer. Its failure is not due to any oversight upon the part of the legislature, but to a manifest and sedulous purpose to accomplish, under the pretense of an inspection law, an end and object confessedly beyond the power of the State to obtain.

Most strongly construed in favor of the State, the act amounts merely to a tribute levied upon the non-resident dealer for the privilege of being exempt from a practical inspection of the product which he is sending into the State for sale. The charge placed upon the non-resident dealer in that behalf is grossly disproportionate to the expense of the State incurred, or to the utmost cost that could be incurred in administering the feeble and inefficient powers granted by the act. These charges are so large and so unreasonable that, in the language of this Court in the Taylor and in the New Hope cases, they demonstrate an abuse of discretion on the part of the legislature and require the Court to declare it a tax and not an inspection fee.

We submit that the judgment of the Court below was wrong and should be reversed with directions to enter a decree in favor of the complainant as prayed in its bill.

Respectfully submitted,

JAMES H. HARKLESS,
CHARLES S. CRYSLER,
CLIFFORD HISTED,
FRANCIS C. DOWNEY,
Attorneys for Appellant

Kansas City, Mo., October 1, 1904.

APPENDIX.

"An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors manufactured and sold in this State.

"*Be it enacted by the General Assembly of the State of Missouri, as follows:*

"SECTION 1. There is hereby created the office of beer inspector which shall be filled by appointment by the governor by and with the consent of the senate within thirty days after the taking effect of this act, an inspector of beer and malt products, who shall serve for the term of four years and until his successor is duly appointed and qualified. He shall be an expert beer brewer and a citizen of the United States and of this State for more than two years next prior to his appointment. He shall give a bond in the sum of twenty-five thousand dollars, to be approved by the governor, for the faithful performance of the duties of his office.

"SECTION 2. Said inspector shall, with the approval of the governor, appoint such deputies as may be required to carry out the provisions of this act, not to exceed four in number, and such clerical help as may be necessary. Said deputies shall each receive for their services the sum of fifteen hundred dollars per annum, all salaries and expenses to be paid out of the sums of money now, or that may hereafter, be appropriated for said purpose.

"SECTION 3. Every person, persons or corporation who shall erect or keep a brewery for the manufacture or brewing of beer or other malt products within this State,

for the purpose of offering the same for sale shall cause the same to be inspected by said State inspector.

"SECTION 4. No person, persons or corporation, engaged in the brewing or manufacture of beer or other malt liquors, shall use any substance, material or chemical in the manufacture or brewing of beer or other malt liquors, other than pure hops or pure extract of hops, or pure barley, malt or wholesome yeast, or rice.

"SECTION 5. Every person, persons or corporation, who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in this State, shall, upon receipt of same, and before offering for sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops, or extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of same; upon receipt of said affidavit, the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beer and malt liquors in this State.

"SECTION 6. The inspector appointed under this act shall provide himself with an office, and shall record on the books kept for that purpose the names and places of business of all persons engaged in the manufacture, brewing and sale of beer and malt liquors. He shall keep a record of all malt liquors and beer manufactured, brewed or sold, and the amount produced by each brewer or manufacturer, or sold by dealer. He shall keep a record of all fees collected and all the expenditures incurred, and shall make a complete and full report of the same to the governor upon the first day of each year.

"SECTION 7. It shall be the duty of such inspector to cause to be inspected all beer and other malt liquors brewed or manufactured or sold in this State, and if he shall find that such beer or other malt liquor has been made from pure hops or the pure extract of hops, or of pure barley, malt or wholesome yeast, or rice, to place upon the package containing the said beer or malt liquor his label, certifying that the same has been inspected and made from wholesome ingredients.

"SECTION 7a. It shall be the duty of the State treasurer upon the taking effect of this act to provide suitable and inimitable State certificates and labels for this inspection, gauging and labeling, having on each proper places for countersigning by the State treasurer and inspector, and shall safely keep the same together with the plates used in making them, when not in actual use. The State treasurer shall from time to time, upon demand, deliver the aforesaid labels to the inspector, taking his receipt therefor, and shall charge said inspector with the same; and shall from time to time as said inspector makes returns of moneys collected in the course of his inspection credit said inspector's account with such sums, and shall keep a true and correct book account of his dealings with said inspector.

"SECTION 7b. It shall be unlawful for any person to attempt to make or make, to attempt to sell or sell, or attempt to use or use any of the certificates or labels or both provided for by this act, or imitations thereof, except such persons as by law are allowed to make, sell and use the same, and any person so offending shall be deemed guilty of a felony, and, upon conviction, be punished by imprisonment in the penitentiary for a term not to exceed five years.

"SECTION 8. The inspector shall be entitled to receive for inspection and gauging one cent for each gallon contained in each package, and two cents for labeling each

package. All fees received by the inspector shall be paid into the State treasury. The word package, as used in this act, shall be construed to mean any vessel of any kind other than pint and quart bottles in which any beer or malt liquor may be placed for sale, containing eight gallons or less; when said beer or malt liquors are placed in pint or quart bottles, a package, as used in this act, shall be construed to mean not to exceed forty-eight pint bottles or twenty-four quart bottles of beer or malt liquors, which, when manufactured and so bottled, must, before sale, be placed in suitable cases containing said number and size of bottles, for inspection and stamping by said State inspector; and when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean each eight gallons or fractional part thereof so contained in said vessel.

"SECTION 9. The expense of said office, including the salaries of the inspector and his deputies, shall be paid monthly out of the amount appropriated by law from the general revenue fund on warrants drawn by the State auditor on vouchers approved by the inspector, and all fees received by the inspector under this act shall, on or before the last day of each month, be paid into the State treasury by said inspector, and shall be placed to the credit of the general revenue fund.

"SECTION 10. Any person who shall sell any beer or malt liquor within this State which has not been inspected according to the provisions of this act, or contained in packages which shall not have upon them the certificate of the State inspector, or any person shall fail to destroy said certificate or label after the contents of said package are disposed of, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period of not less than six months, and in

addition thereto shall have his license or other authority, giving him the right to manufacture or sell said liquors in this State revoked, and shall not again receive any such license or other authority for a period of two years thereafter.

"SECTION 11. If any inspector shall fail to perform any of the duties imposed upon him by this act, or shall in any manner violate any of the provisions thereof, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for not less than thirty days and by a fine not exceeding one thousand dollars, and if any said inspector shall fail to faithfully perform the duties enjoined upon him by this act he may be removed from office by the governor.

"SECTION 12. All prosecutions for fines and penalties under the provisions of this act shall be either by indictment or information in any Court of competent jurisdiction, and when collected shall be paid one-fourth to the informer and three-fourths into the fund for the construction of public roads and highways in the county in which said offense may have been committed and the prosecution begun.

"SECTION 13. All beer and other malt liquors manufactured in this State and exported outside of the State for sale, shall be inspected as other liquors designated in this act, but said inspection shall be free of cost to the manufacturer.

"SECTION 13a. Every railroad, express or transportation company, shall, when requested, furnish to the inspector a duplicate bill of lading or receipt showing the name of the consignor and consignee, date, place received, destination and quantity of beer or malt liquors received by them for shipment to any point within this State. Upon failure to comply with the provisions herein, said railroad, express or transportation company shall forfeit and pay to the State

of Missouri the sum of fifty dollars for each and every failure, to be recovered in any Court of competent jurisdiction. The inspector herein provided for is hereby authorized and empowered to sue in his own name at the relation and to the use of the State. The penalties collected shall be paid into the State treasury.

"SECTION 14. There is hereby appropriated out of the State treasury, chargeable to the general revenue fund, for the years 1899 and 1900, for the pay of the inspector, six thousand dollars; for the pay of the four deputies, twelve thousand dollars; for the rent, stationery, fuel, printing, and such other things as may be necessary for the transaction of the business of said inspector, the sum of six thousand dollars.

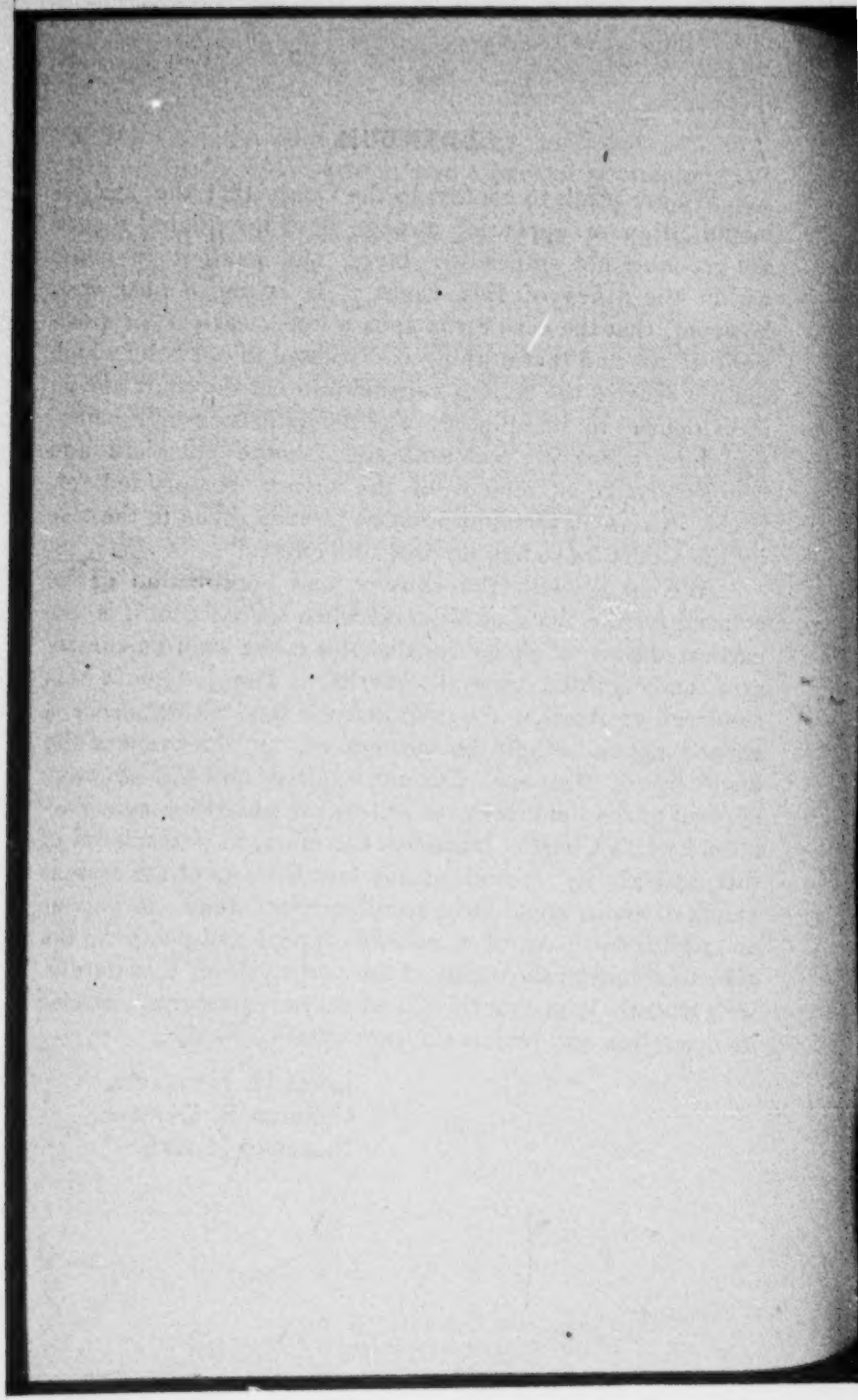
Approved May 4, 1899."

ADDENDUM.

We are frank to confess to the Court that the assignments of error appearing at page 76 of the printed record are probably not sufficiently broad and explicit to come within the rules of this Court. It is to be observed, however, that the case turns upon a few clear-cut propositions of law and that nothing is discussed in our brief which did not receive the serious consideration of the court below, as evidenced by its opinion. The defect in the assignments, therefore, is entirely technical, and a more complete and comprehensive statement of the errors complained of, could, in view of the consideration already given to the case by the Court, have had no probable effect.

We speak with the consent and approbation of the counsel for the State of Missouri when we say that it is the earnest desire of all parties that this cause shall be considered and decided upon its merits. The judgment was rendered on April 1, 1903, so that the time within which a second appeal might be prosecuted, in the event of the dismissal of this one, has not expired, and will not have expired at the time this case will be presented for consideration by this Court. Inasmuch therefore, as a dismissal of this appeal, by reason of any insufficiency of the assignments of error, could have no other effect than to impose an additional cost of a second appeal and postpone the ascertainment of the rights of the parties under this statute, we earnestly hope that this Court may see proper to exercise its discretion and review the case upon its merits.

JAMES H. HARKLESS.
CHARLES S. CRYSLER.
CLIFFORD HISTED.



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Supreme Court of the United States

OCTOBER TERM, 1903.

PABST BREWING CO.,
Appellant,
vs.
G. Y. CRENSHAW AND
JOHN J. DOWNEY,
Appellees.

NO. 85.

REPLY BRIEF OF APPELLANT.

JAMES H. HARKLESS,
CHARLES S. CRYSLER,
CLIFFORD HISTED,
Attorneys for Appellants.

Supreme Court of the United States

OCTOBER TERM, 1903.

PABST BREWING CO.,
Appellant,

vs.

G. Y. CRENSHAW AND
JOHN J. DOWNEY,
Appellees.

NO. 358.

REPLY BRIEF OF APPELLANT.

I.

The Supreme Court of Missouri has never considered the validity of this statute as applied to interstate commerce. In State vs. Bixman, 162 Mo., the application of the act to domestic dealers alone was considered. As related to inspection fees on domestic or intrastate commerce, the Supreme Court of Missouri does not follow the rule announced by this Court in reference to interstate com-

merce, but holds that the fees charged for inspection are not confined to, and need bear no relation to the cost of making such inspection. State vs Bixman, *supra.*

This same principle is applied by that Court to other commodities than liquors as declared in the case cited, page 24, as follows:

"That rule applies to those callings which the state may properly regulate, but has no power absolutely to suppress; but even in the latter case it is not restricted to the mere cost of inspection," citing St. Charles vs. Elsner, 155 Mo., 671.

There has, therefore, been no construction of this statute by the state Court which could in any degree be binding upon this Court. The state Court has declared the act to be an inspection measure, within the proper exercise of the police power of the state as applied to domestic trade. That is all that it has decided.

The federal court, from which this appeal is prosecuted, erroneously adopted the conclusion of the state Supreme Court that the law is an inspection measure, and then erroneously extended its application to interstate commerce. The question then of the interpretation of this statute, and its application to the business of foreign brewers, is one of first impression and open to this Court for final determination.

II.

Our objection to this so-called inspection law is not upon the ground that it is not perfect, or that it is not designed to secure the best results, but that it is wholly lacking in the most ordinary features of inspection measures; that both by its terms and in its practical operation as administered by the state authorities, it accomplishes no

end or object of inspection. It does not even pretend to confine the manufacturer to the use of ingredients which the law says shall be used.

The law is wholly lacking in these three particulars: (1) A method of ascertaining the facts. (2) The right of excluding or preventing the sale of unwholesome beer, or beer not manufactured from these special ingredients. (3) Any power of punishment for the sale of impure or adulterated beer. The entire penal features of the act are confined to a failure to pay the charges prescribed by the act. The description of the statute, therefore, as an inspection law, is a palpable subterfuge and evasion in an attempt to cover up its real purpose as a revenue measure.

III.

In contending that this bill should be construed as a license act, the learned counsel for the state ignore the interpretation put upon it by both the legislature and the state Supreme Court, and by the lower federal court as well, all of whom describe it as an inspection bill. The very terms of the act itself also refute the idea that it is a license measure. It confers no license and no privilege to sell. A man can neither brew beer, nor sell it in the state by complying with this law. A person may, on the other hand, both manufacture and sell without having complied with the law.

The license statutes of Missouri consist of an entirely independent body of legislation, and there is no such relation between them and this act that the latter should be construed in any manner as an amendment to the license laws. It is an entirely independent piece of legislation conceived and enacted for an entirely ulterior purpose than that of conferring the right to manufacture and sell beer. It is enough to say that if the legislature ever had the thought of

making this a license act, it completely forgot its purpose when it came to pass the bill, and there cannot be found even a suggestion of a license within the entire texture of the statute. It is nothing on earth but a cunningly devised revenue measure disguised as an inspection law. But the disguise cannot prevent the Court from throwing aside the mask and penetrating its hidden and real purpose.

To permit this statute to stand as a license measure is to effectually abolish the principle recognized many times by this Court in regard to the inspection of interstate commodities. It is to make the declaration of a purpose, no matter how far-fetched and unsupported by the facts it may be, binding upon this Court. It is to permit the state to say that a statute avowedly passed for one purpose, shall be considered as having been passed for a totally different purpose, and that such declaration must be accepted as binding upon this Court. If this is to be the law, it is certainly new doctrine, and does away with any right of federal control over the question of state interference through inspection laws.

IV.

It is conceded by the state that the fees charged for this inspection bear no sort of relation to the cost, but are grossly excessive, being in fact thirty times the cost. In contending for the right to make this excessive charge for inspection, the learned counsel for appellees fall into two errors: (1) In applying a rule of local law as administered and upheld in Missouri, which we have seen is opposed to the federal law upon the subject; and (2) in applying the law regulating licenses to sell intoxicating liquors.

The argument is in the face of two propositions, abundantly sustained by the decisions of this Court cited in our brief: (1) That in relation to the right of inspection, no distinction exists under the interstate commerce clause of

the Constitution between intoxicating liquors and any other legitimate article of commerce; and (2) that the fee charged for inspection must be based upon the cost of making the same.

V.

The learned counsel for the state are finally driven to the position that this law should be upheld as a specific tax upon beer. In making this contention they fly in the face of the decision of the Supreme Court of the state upon the subject. See State vs. Bixman, p. 24 *et seq.* An examination of the opinion there will show that the Court recognized that under the laws of Missouri, to construe the bill as a tax on beer would be to render the act void. Counsel should not press upon this Court a view of the statute which the Supreme Court of the state has itself recognized as untenable, particularly where counsel appeal to the rule that the state construction must be accepted in this Court.

We cannot believe that this Court will be persuaded by counsel to put a construction on this statute in an effort to uphold it uhder the federal constitution, which, as declared by the state Court would render the act unconstitutional under the laws of Missouri. The act is a revenue measure to be sure. But it is a revenue illegally laid and imposed under a false claim of an inspection law. It is not a direct and specific tax upon beer, such as might be authorized under the laws of Missouri, and this was conceded perforce by the Supreme Court of that state, in order to escape declaring it void under the state constitution.

The Supreme Court of Missouri having held that this was an inspection act, this Court will accept that declaration of the highest Court of the state as being its final opinion of its own state law, and accepting it, will proceed to discuss the same question as thus construed as to its relation to the provisions of the Constitution of the United States.

This exact position has been taken by this Court in the case of C., M. & St. Paul Ry. vs. Minnesota, 134 U. S., 418, (456) where they said, in discussing a position taken by the Supreme Court of Minnesota, with reference to its conflict with the Constitution of the United States:

"The construction put upon the statute by the Supreme Court of Minnesota must be accepted by this Court for the purposes of the present case as conclusive and not to be re-examined here as to its propriety or accuracy. The Supreme Court authoritatively declares that it is the expressed intention of the legislature of Minnesota by the statute that the rates recommended and published by the commission if it proceeds in the manner pointed out by the act are not simply advisory nor merely *prima facie* equal and reasonable, but final and conclusive as to what are equal and reasonable charges; that the law neither contemplates nor allows any issue to be made or inquiry to be had as to their equality or reasonableness in fact; that under the statute the rates published by the commission are the only ones that are lawful, and therefore, in contemplation of law, the only ones that are equal and reasonable; and that in a proceeding for a *mandamus* under the statute there is no fact to traverse except the violation of law in not complying with the recommendations of the commission. In other words, although the Railroad Company is forbidden to establish rates that are not equal and reasonable, there is no power in the courts to stay the hands of the commission if it chooses to establish rates that are unequal and unreasonable.

"This being the construction of the statute by which we are bound in considering the present case, we are of the opinion that so construed it conflicts with the Constitution of the United States," etc., etc.

So here the Supreme Court of Missouri having solemnly declared that the act of the legislature in question is an inspection act only, and not a tax upon beer, this Court will accept that construction, for the purpose of the present case as conclusive, and not to be re-examined here as to its

propriety or accuracy. And this being the construction of the statute by the Supreme Court of Missouri, it is binding here upon this Court, and accepting it as the basis of judicial interpretation by the Supreme Court of Missouri, this Court will proceed to consider whether so construed by the highest court of that state it conflicts with the interstate commerce provisions of the Constitution of the United States.

But this act bears no analogy to any acts conferring the right of taxation upon an interstate product after it shall have become mingled with the general mass of property in the state. With respect to such right, no question is made by these brewers, and unquestionably they are paying now their full quota of state and municipal taxes. This bill will either have to be upheld as being what it has been declared to be by the legislature, by the Supreme Court of Missouri, and by the United States circuit court for the western district of that state, namely, a proper inspection law, or it will have to be declared void. It unquestionably is to be tried by the rules relating to the inspection of commodities. It is not a tax bill within the meaning of the authorities which have sustained taxes, and to call it a tax bill, or to construe it as such would by no means help the position of the state here.

The charge is made, as provided by section eight of the act: "for inspection and gauging," and "for labeling each package." To define this as a tax bill would involve the same inconsistency which we have heretofore pointed out, namely, of making the validity of a bill depend on what might be said to be its purpose, rather than on what it actually means and accomplishes. If this can be the law, then it furnishes an easy and safe way for future legislatures to override the decisions of this Court concerning inspection laws, by calling such charges a tax. Under that principle, the case of Postal Telegraph Company vs. Taylor, 192 U. S., and cognate decisions of this Court were wrongly decided,

criminal prosecutions in each one of the counties of the state, and each sale under the law would constitute an independent violation of the law.

The suit then is brought against the appellees whose sole color of right is an unconstitutional statute, to enjoin them, under claim of such law, from interfering with the appellant in the shipment of its products from other states into the state of Missouri and disposing of them there in accordance with the valid laws of that state, and under its license to do business in that state.

None of the federal decisions cited by counsel for the appellees support their contention against the right to maintain the action. The case falls exactly within the decision of the Court in Vance vs. Vandercook Company, 170 U. S. 438, where a similar bill was sustained. The forfeiture prescribed by section ten of the statute, of the license and authority of the brewers to do business in the state, by way of punishment for violation of this statute, of course would amount to a destruction of its business in Missouri. As said in Minneapolis Brewing Co. vs. McGillivray, 104 Fed., 270, cited by appellees:

"There might be a recovery for a seizure of the warehouse, but the damage resulting from the destruction of the plaintiff's business could not be compensated in an action at law."

The Court further says in that same case, p. 270:

"The jurisdiction of the Court to restrain the officers of this state in the enforcement of an unconstitutional statute is well established, citing Regan vs. Trust Co., 154 U. S., 389; Pennoyer vs. McConnaughy, 140 U. S., 1."

In the later case of Davis & Farnum Mfg. Co. vs. Los Angeles, 189 U. S. 207, it seems to us that the Court stated the exception to which this case belongs:

"That a court of equity has no general power to enjoin or stay criminal proceedings unless they are instituted by a

party to a suit already pending before it and to try the same right that is in issue there, or to prohibit the invasion of the rights of property or the enforcement of an unconstitutional law," was so fully construed and settled in an elaborate opinion by Mr. Justice Gray, *in re* Sawyer, 124 U. S. 200, that no further reference to prior authorities was deemed necessary.

Here we repeat, this is not a suit to enjoin or stay criminal proceedings. None were instituted. It is a suit to prohibit the invasion of the rights of property of the appellant by the enforcement of an unconstitutional law.

In Vicksburg Water-works Co. vs. Vicksburg, 185 U. S. 66, it was declared by this Court:

"It is one of the most valuable features of equity jurisdiction to anticipate and prevent a threatened injury where the damages would be insufficient or irreparable; and the exercise of such jurisdiction is for the benefit of both parties in disclosing to the defendant that he is proceeding without warrant of law, and in protecting the complainant from injuries which, if inflicted, would be wholly destructive of his rights."

We therefore submit, in reference to this abandoned contention of appellees, now sought to be renewed in this Court, that the bill was well founded; that complainant had no adequate remedy at law, and was entitled to the relief invoked in a court of equity.

VII.

An examination of the brief of the learned counsel for appellees in connection with the opinion of the lower court printed in the record, discloses that the positions taken there, and upon which the judgment was made to rest, are abandoned here. A further comparison of the positions of

counsel in their brief here, with the opinion of the Supreme Court of the state of Missouri to which they advert, shows that they have even shifted their position from the grounds upon which that opinion was predicated. There the Court industriously refuted any contention that the law was a tax measure and placed its decision squarely upon the proposition that it was an inspection law within the power of the legislature to pass. It was forced to thus distinguish the statute from a tax measure in order to uphold it, under the sanctities and safeguards of even the state constitution. Notwithstanding the appeal of the learned counsel for appellees to the supposed binding force upon this Court of this judicial pronouncement from Missouri, we none the less find that the most serious argument put forward by them to uphold the legislation is based upon the claim that it is a tax.

While we do not presume to criticise counsel for changing front in a law suit, we may be pardoned the suggestion that something must be wrong with a law which requires so many changes of position to uphold it; particularly when neither the Federal, nor State Court nor the Law Department of the state can get together upon any common ground.

Respectfully submitted.

JAMES H. HARKLESS,
CHARLES S. CRYSLER,
CLIFFORD HISTED,
Attorneys for Appellants.

Kansas City, Mo., November 29, 1904.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

PABST BREWING COMPANY, Appellant.

vs.

G. Y. CRENSHAW AND JOHN J. DOWNEY, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF OF APPELLEES.

STATEMENT OF CASE.

The Pabst Brewing Company, a corporation of the State of Wisconsin, instituted this suit in the Circuit Court of the United States for the Western District of Missouri to obtain an injunction, restraining the Beer Inspector of the State of

Missouri and his deputy from enforcing against it the provisions of an act of the General Assembly of said State, known as the "Beer Inspection Law," and prohibiting them from inspecting or attempting to inspect the beer and other malt liquors manufactured or offered for sale by the complainant and others similarly situated, and from collecting or attempting to collect, under said act, any tax or inspection fee from it or others in like situation.

The bill alleges numerous grounds for the relief sought, and charges that many of the provisions of the Statute in question are in conflict with the Federal Constitution.

All of these objections have been abandoned save one, which alone is insisted upon in this Court.

The sole complaint here of the appellant is that the Missouri Statute, in so far as it applies to beer manufactured in other States and shipped into Missouri for sale and consumption there, is an unauthorized interference with interstate commerce and violative of section 8 of article 1 of the Constitution of the United States, because said act provides that, *after such beer is received in Missouri,* and before its sale in said State, the inspector shall be furnished with an affidavit from the manufacturer or other reputable person having knowledge of the facts, stating that no materials other than pure hops or extract of hops, or pure barley, malt or wholesome yeast, or rice was used in the manufacture of the same, and further requires the payment to the inspector of one-half a cent for each gallon of such beer and one cent for labeling each package of eight gallons, which amount is to be paid into the State Treasury and is largely in excess of the salary and expenses of the inspectors. It is therefore claimed that this is a specific tax upon the beer for revenue purposes, the imposition of which upon beer shipped from other States into Missouri for sale there, is an interference with interstate commerce

and violative of the section of the Federal Constitution above referred to.

It is not claimed that the Statute makes any discrimination between foreign and domestic brewers in the amount to be collected by the inspectors, or in the ingredients to be used in the manufacture of beer. Both are placed upon an equality and neither is given any advantage over the other.

Defendants demurred to the bill. The Judge of the trial Court delivered a written opinion upon this demurrer, which is set out in full in the record. It was held that the act did not violate the Constitution of the United States but was a valid exercise of the police power by the State. The bill charged, however, that defendants insisted upon the payment of fees upon beer, which was only temporarily in the State of Missouri, and was intended to be forwarded for sale in other States and was in fact only being shipped through said State to its final destination. The Court held that the act did not authorize a demand of this character, and as the demurrer went to the whole bill, it was overruled. Subsequently an agreed statement of facts was filed, in which it was conceded that defendants only demanded fees upon beer after it had reached its destination and which had been shipped by complainant into Missouri for sale and consumption in said State; and, following the reasoning in the written opinion, the Court dismissed the bill and the complainant has brought the case here by appeal.

The section of the Statute applicable to the appellant is as follows:

"Section 5. Every person, persons or corporation, who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in this State, shall upon receipt of same, and before offering for sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer there-

of, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops, or extract of hops, or pure barley, malt or wholesome yeast or rice, was used in the manufacture of same; upon receipt of said affidavit the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beer and malt liquors in this State."

It will be noted that the Statute makes no attempt to interfere with the shipment of beer into the State of Missouri, or to regulate the manner of its shipment, or to affect it in any way during its transportation. The act, by its express terms, is only applicable after the beer has been received within the State for sale there.

Other sections of the Statute, as construed by the Supreme Court of Missouri, require the domestic brewer to submit his product to inspection at his brewery and to pay at said place before sale the inspection fees exacted by the State for the privilege of selling the same therein. In order to put the foreign manufacturer upon the same footing, he is required, after his beer or other malt liquors have been received in said State for sale, to present to the inspector an affidavit showing the materials from which it was manufactured and to pay precisely the same fees to the State as the domestic brewer.

A copy of the act as amended by the Legislature in 1901 is printed with this brief for the convenience of the Court.

It will be seen, therefore, as above stated, that the only question for consideration is, whether the State is prohibited from the enactment of this legislation by the interstate commerce clause of the Federal Constitution.

BRIEF.

I.

THE SUPREME COURT OF THE STATE OF MISSOURI HAS HELD THE LAW TO BE CONSTITUTIONAL, AND IT IS NOT OPEN TO APPELLANT TO QUESTION ITS VALIDITY UPON THE GROUND OF ANY SUPPOSED CONFLICT WITH THE STATE CONSTITUTION.

State vs. Bixman, 162 Mo., 1.

THIS COURT WILL FOLLOW THE HIGHEST COURT OF THE STATE IN QUESTIONS INVOLVING THE CONSTRUCTION OF THE STATE CONSTITUTION.

II.

THE ONLY QUESTION FOR DETERMINATION HERE IS WHETHER THE ACT VIOLATES THE CONSTITUTION OF THE UNITED STATES; AND IN DETERMINING THAT QUESTION, THE FEDERAL COURTS WILL ADOPT THE CONSTRUCTION GIVEN TO THE STATUTE BY THE SUPREME COURT OF THE STATE.

Cargill vs. Minnesota, 180 U. S., 452.

III.

THE "WILSON BILL" PUTS INTOXICATING LIQUORS SHIPPED INTO A STATE WITHIN THE POLICE POWER OF SUCH STATE IMMEDIATELY UPON THEIR ARRIVAL. SUCH LIQUORS DO NOT STAND UPON THE SAME FOOTING AS OTHER ARTICLES OF INTERSTATE COM-

MERCE, AND AUTHORITIES TOUCHING THE LATTER ARE INAPPLICABLE, SINCE THE PASSAGE OF SAID BILL, TO THE FORMER. THE STATE MAY PRESCRIBE THE TERMS AND CONDITIONS UPON WHICH SUCH LIQUORS MAY BE SOLD, EVEN IN THE ORIGINAL PACKAGES, AND, IN THE ABSENCE OF DISCRIMINATION AGAINST THE PRODUCTS OF OTHER STATES, SUCH REGULATIONS ARE VALID.

Vance vs. Vandercook Co., 170 U. S., 438.

Reyman Brewing Company vs. Brister, 179 U. S., 445.

This Court said in Vance vs. Vandercook Co., *supra*:

"It is also certain that the settled doctrine is that the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any State regulation to the contrary notwithstanding; that is to say, that the goods received by interstate commerce remain under the shelter of the interstate commerce clause of the Constitution, until by a sale in the original packages they have become commingled with the general mass of property in the State.

This last proposition, however, whilst generally true, is no longer applicable to intoxicating liquors, since Congress, in the exercise of its lawful authority, has recognized the power of the several States to control the incidental right of sale in the original packages, of intoxicating liquors shipped into one State from another, so as to enable the States to prevent the exercise by the receiver of the accessory right of selling in the original packages, *except in conformity to lawful State regulations.* * * * *

The claim that the State Statute is unconstitutional because it deprives of the right to sell imported liquor in the original packages rests therefore on the assumption that the State law is a regulation of interstate commerce, because it forbids the doing of an act which, in consequence of the permissive grant resulting from the act of Congress, the State had undoubtedly the lawful power to do. Indeed, the entire argument by which it is endeavored to maintain the contention arises from excluding from view the change as to the sale of intoxicating liquors arising

from the act of Congress; that is, it rests on the fallacious assumption that the State is without power to forbid the sale of intoxicating liquors in original packages despite the act of Congress, while in fact, as a result of that act, the restrictions and regulations of State laws become operative on the original package before the sale thereof, and *therefore such packages cannot be sold if the State law forbids the sale or can be only so sold in the manner and form prescribed by the State regulations.* In view of the self-evident misconception upon which the argument proceeds, it becomes unnecessary to review the many decisions of this Court cited in support of the proposition relied upon." * * *

"Congress, it is argued, by the act in question, has submitted merchandise in original packages only to the control of State laws, 'enacted in the exercise of its police powers.' As the State law here in question does not forbid, but, on the contrary, authorizes the sale of intoxicants within the State, hence it is not a police law, therefore not enacted in the exercise of the police power of the State, and consequently does not operate upon the sale of original packages within the State. But the premise upon which these arguments rest is purely arbitrary and imaginary. *From the fact that the State law permits the sale of liquor subject to particular restrictions and only upon enumerated conditions, it does not follow that the law is not a manifestation of the police power of the State.* The plain purpose of the act of Congress having been to allow State regulations to operate upon the sale of original packages of intoxicants coming from other States, it would destroy its obvious meaning to construe it as permitting the State laws to attach to and control the sale only in case the States absolutely forbade sales of liquor, and not to apply in case the States determined *to restrict or regulate the same."*

It is further said:

"But this restricts the police power to the mere right to forbid, and denies any and all authority to regulate or restrict. *The manifest purpose of the act of Congress was to subject original packages to the regulations and restraints imposed by the State law.* If the purpose of the act had been to allow the State law to govern the sale of the original packages only where the sales of all liquor were forbidden, this object would have found ready expression, *whilst on the contrary, the entire context of*

the act manifests the purpose of Congress to give to the respective States full legislative authority, both for the purpose of prohibition as well as for that of regulation and restriction with reference to the sale in original packages of intoxicating liquors brought in from other States, nor is the claim well founded that it was decided in Scott vs. Donald that the provisions of the act of Congress of 1890 do not apply in any State by whose laws the sale of liquor is not absolutely forbidden."

"Such a law may forbid entirely the manufacture and sale of intoxicating liquors and be valid. *Or it may provide equal regulations for the inspection and sale of all domestic and imported liquors and be valid.* But the State cannot, under the congressional legislation referred to, establish a system, which, in effect, discriminates between interstate and domestic commerce in commodities to make and use which are admitted to be lawful."

IV.

THE ACT OF THE GENERAL ASSEMBLY OF MISSOURI IS A POLICE MEASURE AND A VALID EXERCISE OF THE POLICE POWER OF THE STATE. IT COMES WITHIN THE EXPRESS TERMS OF THE "WILSON BILL."

a. The argument against the statute is that it provides no means for inspecting foreign beer shipped into the State and furnishes no test by which its purity can be determined, and, as the amount exacted by the State before permission is given to sell such beer in said State greatly exceeds the salaries of the inspectors and other costs of collection, it simply amounts to a specific tax upon the property and cannot be referred to the police power. Hence it is said the "Wilson Bill" does not apply.

The statute names the materials from which beer must be manufactured. It prohibits the use of any other. As construed by the Supreme Court of the State, it provides a method for the inspection of the home product at the brewery. An officer of Missouri cannot be stationed at the place of manufacture in other States to examine the ingredients used and pass upon the quality

of the beer as it is being made. Hence it is that the statute requires an affidavit from the manufacturer or other person having knowledge of the facts, showing the materials used in making foreign beer. No other course is open to the State to determine its purity. It must rely upon evidence furnished its officers after the beer comes within its jurisdiction. The character of the act as an inspection measure cannot be destroyed because the bill may not be perfect or the best means may not have been adopted. It is enough that it provides means to test the quality of the beer shipped into the State.

The real objection, however, is that the amount exacted by the State exceeds the inspectors' salaries and the cost of collection and furnishes a large amount of general revenue and must therefore be treated as an exercise of the taxing power.

It by no means follows that, because a large revenue is derived from a statute regulating the traffic in intoxicating liquors, such statute cannot be deemed a police measure.

"It is within the power of the Legislature to tax the liquor traffic, wholesale, as well as retail, and an act providing for the taxing of such business is not a bill to raise revenue, but simply an exercise of the police power of the State."

11 Am. and Eng. Enc. of Law (1st Ed.), 592.

Black on Intoxicating Liquors, Sec. 55.

Kurth vs. State, 86 Tenn., 134.

"Licenses for the sale of intoxicating liquors are not only imposed for the purpose of raising revenue, but also for the purpose of regulating the traffic and consumption of these articles, and hence the State may impose such conditions for conducting said traffic as it may deem most for the public good. Instead of a license fee of $125 it might have imposed a license fee of $250 *or any other amount.*"

McGahey vs. State of Virginia, 135 U. S., 662.

The Supreme Court of Missouri responded to a similar objection made to this act in State vs. Bixman, 162 Mo. Loc. Cit., 19, in these words:

"By any easy transition we are now brought to the vital proposition in this case. It is propounded in the query of one of the learned counsel for the defendant: 'Is the act simply an inspection measure? Is it a revenue measure? Is it both an inspection and a revenue measure?' Our conclusion depends largely upon the proper answer to this question. If we can clear away all confusion on this point the other propositions, which are dependent upon it, will be of comparatively easy solution. The insistence of the learned counsel for the defendant is that it is an act to levy a general revenue or property tax and not a police regulation. In arriving at this conclusion great stress is laid upon the fact that a large revenue—an amount approximating a half million dollars—is covered into the State Treasury, together with the fact that the statute requires all the fees arising under it to be paid directly into the Treasury, and that the salaries of the inspector and his deputies shall be paid out of a distinct appropriation for that purpose. Having satisfied themselves that it is simply a revenue tax, and the law a method of raising revenue only, counsel proceed to occupy two more advanced positions, to-wit, that if the Legislature intended by these inspection fees to raise revenue, the law cannot stand, and that the Legislature has not an arbitrary power to prohibit the sale of beer. Both of these propositions we answer in the negative, upon long-established principles.

As to the first, this Court has answered in no uncertain language. In State vs. Hudson, 78 Mo., 305, the Court said:

'It does not follow because the license fee is large, or because it may become a part of the public revenue, that it is therefore a tax. Many fines, penalties, and forfeitures become a part of the public revenue of the State that are not derived from taxation. The disposition of the fund derived from the license fees does not necessarily determine the character of such fees.' We may add that when the subject is within the police power, as we think we shall be able to show, this is then the extent to which it shall be exercised, and the regulations to effect the desired end, are matters within the legislative discretion. The fact

that a large revenue results from this price which the Legislature requires of the brewers for the privilege of carrying on their business in this State, does not establish that it is a simple revenue tax under the guise of inspection merely."

The Court then concludes upon this branch of the case as follows:

"Having thus indicated the fundamental principles which must control in our construction of the act of May 4th, 1899, we are prepared to answer the question propounded as to the nature of the exaction prescribed by the statute. In our opinion, it is a police regulation, imposing conditions upon the business of manufacturing and selling beer and malt liquors in this State, which business the State may absolutely suppress or permit upon such terms as the Legislature may prescribe. We construe the act in view if all its parts and in connection with other license laws in this State and hold that the fee exacted is the price which the State demands for the privilege of doing the business of brewing and selling beer and malt liquors in this State, and it is immaterial by what name it is called, and being such it is not a tax upon property within the meaning of our Constitution, and hence the objection that it is not levied according to value, and is not uniform, and exceeds the constitutional rate, must fall with the proposition to which they are corollaries."

It was urged upon the trial Court in this case that the act under consideration cannot be treated as a police measure because of the large revenue to the State therefrom. The learned Judge of the Court below answered this contention in his opinion upon the demurrer (120 Fed., Loc. Cit., 152), in these words:

"Laws for protecting the people against impure food, adulterated milk and butter, decayed vegetables, and unwholesome ingredients in intoxicating liquors, inhere in the police power of the State. The fact that a large revenue may incidentally result is not fatal to such a law, especially in respect to intoxicants. In the very nature of the case, the amount of the license fee must rest in the sound discretion of the legislative branch of the government. As said by Mr. Justice Catron, in the licenses cases, 5 How. 504-599:

'The assumption is, that the police power is not touched by

the Constitution, but left to the States, as the Constitution found it. And this is conceded; and whenever a thing, from character and condition, is of a description to be regulated by that power of the State, then the regulation may be made by the State, and Congress cannot interfere.'

Subject, of course, to the ascertainment by the Federal Courts, in a proper case, as to whether or not the thing be within the essential police power of the State.

This character of legislation is bottomed upon the postulate in this country, that the right to sell intoxicants is not a natural right. Hence, it is universally recognized that the State may prohibit entirely its sale within its territory, or it may grant permission to sell under such restrictions and regulations as the law making department in its wisdom may see fit to impose. And so long, under the statute, as the regulation and exaction are free from unequal discrimination against products the subject of interstate commerce, this complainant is without legal grievance.

The large yield to result to the State from the inspection fees exacted beyond the cost of executing the law, is supported by that eminent jurist, Judge Cooley, who said:

'It is proper and reasonable to take into account not only the expense merely of direct regulation, but all the incidental consequences which may be likely to subject the public to cost in consequence of the business licensed. In some cases the incidental consequences are much the most important, and, indeed, are what are principally had in view when the fee is decided upon. * * * The business of selling intoxicating liquors has a powerful tendency to increase crime and pauperism. It renders a large force of peace officers essential and it adds to the expense of the Courts, and of nearly all branches of civil administration. It cannot be questioned, therefore, if it is to be licensed by the public authorities, that it is legitimate and proper to take into account all the probable consequences, or that the payment to be exacted should be sufficient to cover all the incidental expenses to which the public are likely to be put by means of the business being carried on. Cooley on Taxation, Sec. ed. 599. State vs. Luddington, 33 Wis., 107.

It is upon this theory that high license laws of the State are upheld.

'Such laws are regarded as police regulations, established by the Legislature for the prevention of intemperance, pauperism

and crime, and for the abatement if nuisances, and are not regarded as an exercise of the taxing power. Pursuits that are pernicious and detrimental to public morals may be prohibited altogether, or licensed for a compensation to the public. It does not follow because the license fee is large or because it may become a part of the public revenue, that it is, therefore, a tax.' State ex rel. vs. Hudson, 78 Mo., 302, l. c., 304-305."

b. It is argued, however, that these cases only discuss the rules applicable to *license* fees and the amount that may be charged for *licenses* to sell intoxicants It is said that the act under discussion is not a *license* measure and was not intended to restrict or in any degree regulate the sale of beer, and has nothing to do with the general statutes of the State requring license fees from those engaged in such business.

It may be answered that the fee required by the statute is not a tax upon the beer because the owner may bring it into the State, consume it himself, or give it away without the payment of any fee under this act. He may keep it in the State indefinitely and no payment will be exacted from him. It is not an annually recurring charge as in the case of taxes upon property. It is paid once for all. He can keep the beer without the payment of the fees, but he is not permitted to sell until the same are paid. As soon as the payment of the fees required by the statute is made, he then has the privilege of selling. Without the payment he is not allowed to sell, and with it that privilege is conferred. Wherein does this differ from any other exaction or fee demanded by the State as a condition precedent to the grant of a license or privilege to sell intoxicants—which the State may withhold at its pleasure?

The State demands an affidavit showing the materials from which the beer was manufactured and the payment of the fees fixed by the act for the privilege of selling such beer in said State. It is a privilege which the State may withhold. It may affix to

the grant such conditions as the Legislature deems proper, provided no unfair discriminations are made. The home brewer pays for this privilege at his brewery in proportion to his output, and a like exaction is made from persons or corporations who bring into the State for sale beer made in other States.

It is incorrect to say that the right to sell beer is derived from other statutes. The provisions of the act under review attach to and become a part of the license laws of the State, regulating the right to manufacture and sell beer. It will not do to say, therefore, that this is not a tax upon the privilege or business on the ground that the right to engage in the business is given by another statute. It was still within the power of the Legislature to impose additional conditions and burdens upon the privilege of carrying on the business. It is not necessary that all the regulations of the liquor traffic should be contained in one statute.

State vs. Luddington, 33 Wis., 107.

Kurth vs. State, 86 Tenn., 134.

Complainant, after the passage of this act, was not authorized to sell beer by virtue of a license granted to it under other statutes, *unless it also complied with the requirements of this law.* The construction of the State statutes by the highest Court of Missouri will be adopted by this Court. Hence we quote again from the State vs. Bixman, *supra*, upon this subject:

"Learned Counsel strenuously urged that this cannot be a tax or burden placed upon the business, in contradistinction to a tax upon property, as we have hereinbefore decided, because, they say, an occupation tax involves two elements—payment of a fixed amount for a fixed time and a permit to carry it on for a fixed time. This assumes that in some way the Legislature is restricted to this exact method. But we hold that it is competent for the Legislature to fix the amount in proportion to the business

done or the output sold as in this case. This is a matter for the law-making power to determine, and, as we have already said, it does not follow that a license must issue for a fixed period. The imposition of the tax is one thing; the license another. Certainly, a statute providing for licensing the manufacture and sale of beer, and containing the inspection features of the act before us, and requiring the payment of the fees prescribed therein as a condition precedent for carrying on the business under such license, would be a valid exercise of police power, *and such is the effect of this law when considered with the other statute in pari materia.*"

c. The State has plenary police power to regulate the manufacture and sale of intoxicating liquors within its borders. It may entirely prohibit the same or permit it upon such terms as the Legislature imposes. It may require the inspection of beer and other malt liquors or may demand other evidence of their purity and may fix the charges that must be paid before such liquors can be sold in said State. Having the right to absolutely *prohibit*, it may authorize the manufacture and sale upon condition that the charges, which it makes for its official inspection, shall be paid into the State Treasury. As it may prohibit entirely, the Legislature may license conditionally. It may effect the licensee with such restraints, conditions and responsibilities as it chooses to require. The right to manufacture and sell intoxicating liquors is not a natural right.

"The Legislature may grant or withhold authority to sell at its pleasure, and granting such authority, it is held by the licensee at the mere pleasure or grace of the body granting it. It is held by him not as a matter of privilege and absolute right, but as a favor, which, like all favors must be received upon such terms and conditions and subject to such burdens and inconveniences as the donor thinks proper to impose, and the donee elects to accept."

State vs. Luddington, 33 Wis., 107.

Black on Intoxicating Liquors, Sec. 39.

Austin vs. State, 10 Mo., 591.

State vs. Bixman, 162 Mo., 1.

In McGahey vs. State of Virginia, 135 U. S., 662, it was urged that a dram shop keeper was entitled to pay his license fee in "tax coupons," notwithstanding the statute of the State required the payment in lawful money of the United States. This Court said that it was conceded that the State might in her discretion absolutely abolish the sale of intoxicating liquors, or prescribe upon what terms they should be sold. "In this view, there does not seem to be any violation of the obligation of the State in requiring the tax which is imposed to be paid in any manner whatever—in gold, in silver, in bank notes, or in diamonds. The manner of payment is part of the condition of the license intended as a regulation of the traffic. It would be very different if the business sought to be followed was one of the ordinary pursuits of life in which all persons are entitled to engage."

Also

Boston Beer Co. vs. Mass., 97 U. S., 25.

City of Danville vs. Hatcher (Va.), 44 S. E., 723.

In the case last cited it is said:

"It has been repeatedly decided that the subject is wholly within the police power of the Legislature and that the traffic is not one of the privileges or immunities of citizenship guaranteed and protected by the United States Constitution or the fourteenth amendment thereto. It may be entirely prohibited; and its regulation, when permitted, is absolutely within the discretion of the several States."

The Court of Appeals of Maryland said of the Legislature of that State:

"They may prohibit the sale of spirituous liquors if they see fit to do so; or *they may restrict it in any manner which their*

discretion may dictate. No one can claim as a right the power to sell, either at any time, or at any place, or in any quantity. If he is allowed to sell under any circumstances it is by the free permission of the Legislature *and on such terms as it sees fit to impose."*

Tragesser vs. Gray, 9 L. R. A., 780.

And the Supreme Court of Alabama in Ex Parte Sikes, 24 L. A. R., 774, declared that:

"Having the power to prohibit, the Legislature undoubtedly could fix the price of a license to sell liquor at any sum."

A tax is frequently imposed upon a business or other exactions are required from parties engaged in it in order to discourage and restrict it.

"Custom has much to do in determining whether certain classes of exactions are to be regarded as taxes or as duties imposed for regulation. If by the common understanding and general custom of the country, a particular duty is regarded as being imposed upon certain individuals, not as their proportionate share in the burdens of government, but because of some special relation to property peculiarly located, *or to business peculiarly troublesome or dangerous,* so that a requirement that the duty shall be performed by such individuals is usually regarded as only in the nature of regulation of relative obligations and duties through the neighborhood or municipality, there is no sufficient reason why this may not be considered a mere police regulations, *though the proceedings assume the form of taxation and are even designated by that name."*

Cooley on Taxation, 2nd Ed., 587.

The State of Missouri, under its police power, has the right to prohibit the sale of intoxicating liquors entirely or to permit such sale under such regulations and conditions as the Legislature may prescribe. In the exercise of this power, the State has declared that until the home brewer has had his product inspected

at his brewery and has paid the fees fixed by the act under consideration, he shall not sell, but when this is done and the other laws of the State complied with, he may sell the beer manufactured by him. It has further declared that the foreign manufacturer who ships his product for sale into said State shall furnish an affidavit to the proper officer showing the quality thereof and shall pay like fees as the citizens of said State. This is the price exacted by the State for the privilege of doing that which the Legislature might prohibit in toto. The Supreme Court of Missouri said in the case hereinbefore cited:

"We construe the act in view of all its parts, and in connection with other license laws of this State, and hold that the fee exacted is the price which the State demands for the privilege of doing the business of brewing and selling beer and malt liquors in this State, and it is immaterial by what name it is called," etc.

So the act was passed in the exercise of the police power and comes within the provisions of the "Wilson Bill."

V.

IF APPELLANT'S CONTENTION, THAT UNDER THE GUISE OF AN INSPECTION LAW, THE STATE STATUTE SIMPLY IMPOSES A SPECIFIC TAX UPON BEER FOR GENERAL REVENUE PURPOSES, WAS CORRECT, STILL THERE IS NOTHING IN THE INTERSTATE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION TO PREVENT SUCH TAX.

In Hinson vs. Lott, 75 U. S., 148, a direct tax of fifty cents a gallon upon spirituous liquors shipped into Alabama for sale there was upheld by this Court, a like tax being demanded upon domestic liquors. It was decided that there was no violation of the Federal Constitution by the imposition of such a tax. The statute then under consideration enacted:

"Before it shall be lawful for any dealer or dealers in spirituous liquors to offer any such liquor for sale within the limits of

this State, such dealer or dealers introducing any such liquor into the State shall first pay the tax collector of the county into which such liquors are introduced a tax of fifty cents per gallon upon each and every gallon thereof."

The act of the Legislature of the State of Missouri now before the Court, under this decision, would not be violative of the Federal Constitution, if appellant's construction should be adopted, and it should be held to impose upon beer manufactured in or shipped to said State a specific tax of one-half of cent per gallon.

The Missouri statute does not impose any restriction upon the shipment of beer into the State. No fee or tax or other exaction is made until after it has been received at its destination in said State, and is held there for sale. The interstate commerce clause does not prohibit the levy of a tax upon goods brought from another State after they have arrived at their destination.

"Goods brought into a State from another are not imported within the meaning of the U. S. Constitution, Art. 1, § 10, par. 3, forbidding State taxation of imports, and are, therefore, though still in the original packages, subject to State taxation after they have reached their destination and are held in the State for sale."

American Steel & Wire Co. vs. Speed, 192 U. S., 500.

Carstairs vs. Cochran, 193 U. S., 10.

VI.

THE BILL WAS PROPERLY DISMISSED. IT DOES NOT STATE A CASE AUTHORIZING AN INJUNCTION.

1. It is not charged in the bill that defendants are attempting to take possession of, interfere with, or destroy, without complainant's consent any of its property. Complainant does not need an injunction to prevent the inspection of its beer. No such inspection under the State can be made *without its consent.*

There is certainly no reason for an injunction to prevent that which cannot be done *except at the request of complainant.* Unless an affidavit is furnished by the complainant, and the packages of beer pointed out to the inspectors, they have no duty to perform under the act. The statute itself is pleaded in full in the bill, so the Court will determine what they can do "when they are about to enforce its provisions," as charged in the bill. It is not required even that defendants give information to the proper prosecuting officers upon which to base criminal proceedings. The complainant had just as well "enjoin itself" from submitting the affidavits and pointing out the packages to be inspected by the defendants. The defendant can do nothing towards an inspection unless at complainant's request.

2. An injunction against the *defendants* would not prevent grand juries from returning indictments or prosecuting officers from filing informations under section twelve, which is the method for beginning criminal prosecution provided by the act, and also by the general laws of the State.

3. The defendants are not required to institute such proceedings; but if they were, it has been held that an injunction is not the proper remedy to prevent criminal prosecutions.

"It remains only to consider the case so far as the final decree assumes to enjoin the officers of the State from instituting or prosecuting any indictment or criminal proceeding having for their object the enforcement of the statute of 1895. We are of opinion that the circuit court of the United States, sitting in equtiy, was without jurisdiction to enjoin the institution or prosecution of these criminal proceedings commenced in the State Court."

"Undoubtedly, the courts of the United States have the power, under existing legislation, by writ of habeas corpus, to discharge from custody any person held by State authorities under criminal proceedings instituted under State enactments, if such enactments are void for repugnancy to the Conntitution, laws or treaties of the United States, but even in such cases we

have held that this power will not be exercised, in the first instance, except in extraordinary cases, and the party will be left to make his defense in the State Court."

* * * * * * * *

"But the existence of the power in the courts of the United States to discharge upon habeas corpus by no means implies that they may, in the exercise of their equity powers, interrupt or enjoin proceedings of a criminal character in a State Court. The plaintiffs state that the toll-gatherers in their service had been indicted by a State Court for violating the provisions of the act of 1895 in respect of tolls. Let them appear to the indictment and defend themselves upon the ground that the State statute is repugnant to the Constitution of the United States. The State Court is competent to determine the questions thus raised, and is under duty to enforce the mandates of the supreme law of the land. And if the question is determined adversely to the defendants in the highest Court of the State in which the decision could be had, the judgment may be re-examined by this Court upon writ of error."

Fitts vs. McGhee, 172 U. S., 516.

The Supreme Court of Missouri has expressly held that Equity has no jurisdiction to enjoin the enforcement, by criminal proceedings, of the act in controversy.

State ex rel vs. Wood, 155 Mo., 425.

"A court of equity is without jurisdiction to enjoin criminal prosecutions under a statute or ordinance alleged to be unconstitutional and void, even though it also alleges that it is the purpose of such prosecutions to injure complainant in his property rights, and that such will be their effect."

Davis & Farnum Mfg. Co. vs. Los Angles, 115 Fed. Rep., 537.

Arbuckle vs. Blackburn, 113 Fed. Rep. 616.

In re Sawyer, 124 U. S., 210.

Minneapolis Brewing Co, vs. McGillivray, 104 Fed. Rep. 258.

Hensley vs. Meyers, 45 Fed. Rep., 283.

A distinction is taken between cases where the *sole* method of enforcing an alleged unconstitutional Statute is by criminal prosecutions and those where the statute authorizes the officer in executing such statuts *to seize, destroy, interfere with or confiscate property.*

Minneapolis Brewing Co. vs. McGillivray, 104 Fed. Rep. 1. c., 272.

In the case at bar there is absolutely nothing that can be done, if complainant refuses to submit its beer to the requirements of the act, except to institute criminal prosecutions, and the only effect an injunction could have would be to prevent the institution of such prosecutions.

b. The number of prosecutions that may be begun will not authorize resort to Equity.

"That the defendant may be frequently indicted constitutes no reason why a Federal court of equity should assume to interfere with the ordinary course of criminal procedure in a State Court."

Fitts vs. McGhee, *supra.*

"That fact that the complainants' product is widely sold in Ohio, and many persons may be subject to prosecution, does not enlarge the jurisdiction of a court of equity to interfere by injunction to control prosecutions for alleged violations of the laws of the State."

Arbuckle vs. Blackburn, 113 Fed. Rep. 1. c. 627.

c. The fact that property may be *incidentally* affected or indirectly injured by *criminal* prosecutions, or as a necessary result of such *prosecutions* alone, cannot authorize a resort to equitable interference with such prosecutions.

"Regulations of saloons, beer halls, theaters, and places of amusement generally, market places, slaughter houses, gas works, powder magazines, laundries, cemeteries, fire limits—indeed, of all establishments, trades, and occupations subject to the police power of the State, unavoidably affect property rights, and are usually rendered effective by making their violations public offenses. Now, if there were such jurisdictions as that

for which complainant contends, every controversy over the validity of an ordinance or statute relating to any of the matters enumerated would furnish an occasion for interference by injunction."

Davis & Farnum Mfg. Co. vs. Los Angles, 115 Fed. Rep. l. c., 543.

It is respectfully submitted that from any standpoint the decree dismissing the bill was correct and should be affirmed.

EDWARD C. CROW,
Attorney-General of Missouri, and
WILLIAM M. WILLIAMS,
Attorneys for Appellees.

AN ACT creating the office of inspector of beer and malt liquors of the state and providing for the inspection of beer and malt liquors manufactured and sold in this state.

SECTION
1. Office of beer inspector created—appointment—term of office—qualifications.
2. Shall appoint deputies—salaries of inspector and deputies.
3. Who required to have malt products inspected.
4. What to be used in the manufacture of beer.
5. Requirements when beer other than that manufactured in this state is offered for sale.
6. Shall provide an office—keep record of beer brewed or sold—fees collected and expenditures.
7. Shall inspect all beer and label packages.
7a. State treasurer to provide certificates and labels, etc.
7b. Penalty for false use of certificates or labels.

SECTION
8. Fees for inspection—fees paid into state treasury—"package" construed.
9. Salaries and expenses, how paid.
10. Penalty for selling beer not inspected.
11. Inspector failing to perform his duty, penalty.
12. Prosecutions shall be by indictment or information—disposition of fines and penalties.
13. Beer exported inspected free of cost.
13a. Transportation companies to furnish inspector with duplicate bill of lading—penalty for refusal.
14. Appropriation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. There is hereby created the office of beer inspector which shall be filled by appointment by the governor by and with the consent of the senate, within thirty days after the taking effect of this act, an inspector of beer and malt products, who shall serve for a term of four years and until his successor is duly appointed and qualified. He shall be an expert beer brewer and a citizen of the United States and of this state for more than two years next prior to his appointment. He shall give a bond in the sum of twenty-five thousand dollars, to be approved by the governor, for the faithful performance of the duties of his office.

SEC. 2. Said inspector shall, with the approval of the governor, appoint such deputies as may be required to carry

out the provisions of this act, not to exceed four in number, and such clerical help as may be necessary. Said deputies shall each receive for their services the sum of fifteen hundred dollars per annum, and said inspector shall receive the sum of three thousand dollars per annum, all salaries and expenses to be paid out of the sums of money now, or that may hereafter be, appropriated for said purpose.

SEC. 3. Every person, persons or corporation who shall erect or keep a brewery for the manufacture or brewing of beer or other malt products within this state, for the purpose of offering the same for sale, shall cause the same to be inspected by the said state inspector.

SEC. 4. No person, persons or corporation, engaged in the brewing or manufacture of beer or other malt liquors, shall use any substance, material or chemical in the manuacture or brewing of beer or other malt liquors, other than pure hops or pure extract of hops, or of pure barley, malt or wholesome yeast, or rice.

SEC. 5. Every person, persons or corporation who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in this state shall, upon receipt of same, and before offering for sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops or the extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of same; upon the receipt of said affidavit, the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beer and malt liquors in this state.

SEC. 6. The inspector appointed under this act shall provide himself with an office, and shall record on books kept

for that purpose the names and places of business of all persons engaged in the manufacture, brewing and sale of beer and malt liquors. He shall keep a record of all beer and malt liquors manufactured, brewed or sold and the amount produced by each brewery or manufacturer, or sold by dealer. He shall keep a record of all fees collected and all expenditures incurred, and shall make a full and complete report of the same to the governor upon the first day of each year.

SEC. 7. It shall be the duty of such inspector to cause to be inspected all beer or other malt liquors brewed or manufactured or sold in this state, and if he shall find that such beer or other malt liquor has been made from pure hops or the pure extract of hops, or of pure barley, malt or wholesome yeast, or rice, to place upon the package containing such beer or malt liquor his label, certifying that the same has been inspected and made from wholesome ingredients.

SEC. 7a. It shall be the duty of the state treasurer upon the taking effect of this act to provide suitable and inimitable state certificates and labels for this inspection, gauging and labeling, having on each proper places for countersigning by the state treasurer and inspector, and shall safely keep the same together with the plates used in making them, when not in actual use. The state treasurer shall from time to time, upon demand, deliver the aforesaid labels to the inspector, taking therefor his receipt, and shall charge said inspector with the same; and shall from time to time as said inspector makes returns of moneys collected in the course of his inspection credit said inspector's account with such sums, and shall keep a true and correct book account of his dealings with said inspector.

SEC. 7b. It shall be unlawful for any person to attempt to make or make, to attempt to sell or sell, or attempt to use or use any of the certificates or labels, or both, provided for by this act, or imitations thereof, except such persons as

by law are allowed to make, sell and use the same, and any person so offending shall be deemed guilty of a felony, and upon conviction, be punished by imprisonment in the penitentiary for a term not to exceed five years.

SEC. 8. The inspector shall be entitled to receive for inspecting and gauging one-half cent for each gallon contained in each package, and one cent for labeling each package. All fees received by the inspector shall be paid into the state treasury. The word package, as used in this act, shall be construed to mean any vessel of any kind other than pint and quart bottles, in which any beer or malt liquor may be placed for sale, containing eight gallons or less; when said beer or malt liquors are placed in pint or quart bottles, a package, as used in this act, shall be construed to mean not to exceed forty-eight pint bottles or twenty-four quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be placed in suitable cases containing said number and size of bottles, for inspection and stamping by said state inspector; and when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean each eight gallons or fractional part thereof so contained in said vessel. (Amended 1901.)

SEC. 9. The expense of said office, including the salaries of the inspector and his deputies, shall be paid monthly out of the amount appropriated by law from the general revenue fund on warrants drawn by the state auditor on vouchers approved by the inspector, and all fees received by the inspector under the provisions of this act shall, on or before the last day of each month, be paid into the state treasury by said inspector, and shall be placed to the credit of the general revenue fund.

SEC. 10. Any person who shall sell any beer or malt liquor within this state which has not been inspected according to the provisions of this act, or contained in packages

which shall not have upon them the certificate of the state inspector, or any person shall fail to destroy said certificate or label after the contents of said package are disposed of, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period of not less than six months, and in addition thereto shall have his license or other authority giving him the right to manufacture or sell said liquors in this state revoked, and shall not again receive any such license or other authorty for a period of two years thereafter.

SEC. 11. If any inspector shall fail to perform any of the duties imposed upon him by this act, or shall in any manner violate any of the provisions thereof, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days and by a fine not exceeding one thousand dollars, and if any said inspector shall fail to faithfully perform the duties enjoined upon him by this act he may be removed from office by the governor.

SEC. 12. All prosecutions for fines and penalties under the provisions of this act shall be either by indictment or information in any court of competent jurisdiction, and when collected shall be paid one-fourth to the informer and three-fourths into the fund for the construction of public roads and highways in the county in which said offense may have been committed and prosecution begun.

SEC. 13. All beer or other malt liquors manufactured in this state and exported outside of the state for sale, shall be inspected as other liquors designated in this act, but said inspection shall be free of cost to the manufacturer.

SEC. 13a. Every railroad, express or transportation company, shall, when requested, furnish to the inspector a duplicate bill of lading or receipt showing the name of the consignor and consignee, date, place received, destination and

quantity of beer or malt liquors received by them for shipment to any point within this state. Upon failure to comply with the provisions herein, said railroad, express or transportation company shall forfeit and pay to the state of Missouri the sum of fifty dollars for each and every failure, to be recovered in any court of competent jurisdiction. The inspector herein provided for, is hereby authorized and empowered to sue in his own name at the relation and to the use of the state. The penalties collected shall be paid into the state treasury.

SEC. 14. There is hereby appropriated out of the state treasury, chargeable to the general revenue fund, for the years 1899 and 1900, for the pay of the inspector, six thousand dollars; for the pay of four deputies, twelve thousand dollars; for rent, stationery, fuel, printing, and such other things as may be necessary for the transaction of the business of said inspector, the sum of six thousand dollars.

Approved May 4, 1899.

Supreme Court of the United States.

No. 85.—October Term, 1904.

Pabst Brewing Company, Appellant, vs. G. Y. Crenshaw et al. } Appeal from the Circuit Court of the United States for the Western District of Missouri.

[April 17, 1905.]

Mr. Justice White delivered the opinion of the Court.

The Pabst Brewing Company, a Wisconsin corporation, filed its bill in the court below to enjoin the beer inspector of the State of Missouri and his assistant from collecting or attempting to collect an inspection charge, fee, license or burden, which it was alleged the law of Missouri imposed upon beer or other malt liquors when shipped from other States into Missouri, after its delivery within that State to the consignee, and when held for sale for consumption in Missouri or for shipment to other States. The general ground upon which the law was assailed was that the exactions complained of were regulations of commerce repugnant to the Constitution of the United States. It was in addition specially averred that so far as the law imposed a charge on beer shipped from Wisconsin into Missouri, and held there by the consignee for sale and shipment for consumption in other States, the Missouri law was repugnant to the commerce clause, because in this particular it discriminated in favor of beer manufactured in Missouri and held for sale or shipment for consumption in other States.

The bill was amended and demurred to. Whilst the court considered the law not to be in conflict with the commerce clause on the general grounds alleged, it nevertheless concluded, because of the averment concerning discrimination as to beer shipped into Missouri for reshipment to other States, that the demurrer could not be sustained. (120 Fed. Rep. 144.) An answer was thereupon filed, as also a replication, and subsequently the cause was submitted upon the pleadings and an agreed statement of facts.

The Supreme Court of Missouri having decided that the law in question did not provide for any charge or burden upon beer or other malt liquors shipped into Missouri and held there for reshipment to points outside of the State, the court below, adhering to its previous opinion as to the general averments of the bill, and applying the construction given by the Supreme Court of the State to the statute, held that it did not discriminate, and dismissed the suit.

The law of Missouri in question is entitled "An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors manufactured and sold in this State." The provisions of the act essential to be considered may be summarized as follows:

It creates the office of beer inspector, to be appointed by the governor, who shall be an expert beer brewer, and who is required to furnish a bond, and is given power to appoint the necessary deputies to execute the provisions of the act. The act forbids every person or corporation engaged in brewing within the State from using any material or chemical in the manufacture of beer or other malt liquors other than pure hops or pure extract of hops, or barley, malt, or wholesome yeast or rice. It is provided that the inspector or his deputies shall keep a record of those engaged in the manufacture, brewing and sale of malt liquors within the State and of the quantity manufactured or sold, and shall make a full report to the governor concerning the same, and imposes upon the officials named the duty of inspecting all beer or other malt liquors manufactured or sold within the State, to see that they conform to the standard of purity which the law requires. The act further imposes an inspection fee, charge or license, accompanied with provisions for a label or stamp to be affixed upon the packages containing the beer or other malt liquor so manufactured or offered for sale within the State.

Concerning beer or other malt liquors manufactured outside of the State of Missouri and shipped into that State for sale and consumption within the State, after delivery and receipt under the shipment, the act provides as follows:

"SEC. 5. Every person, persons or corporation who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in this State shall, upon receipt of same, and before offering for sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops or the extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of same; upon the receipt of said affidavit the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beer and malt liquors in this State."

In the printed and oral argument at bar all the contentions concerning discrimination are waived, and the sole ground relied upon is the assertion that the statute constitutes a regulation of commerce and is hence repugnant to the commerce clause of the Constitution of the United States.

Brevity and clearness in the consideration of the propositions relied upon to sustain the contentions made will be subserved by fixing at the

outset exactly what the statute does and by stating the legal principles which are controlling.

The subject with which the statute deals is beer and other malt liquors. Plainly, it operates upon such liquors only when manufactured in the State or if shipped from other States, after their arrival in the State and when they are held there for sale and consumption therein.

It is provided by the act of Congress, commonly styled the Wilson Act, (26 Stat. 313, ch. 728), as follows:

"That all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

The scope of this act and the power of Congress to adopt it was passed upon in *In re Rahrer*, (140 U. S. 545.) The scope of the act was thus stated (p. 560):

"Congress has now spoken and declared that imported liquors or liquids shall, upon arrival in a State, fall within the category of domestic articles of a similar nature."

It was decided that although the act had the effect thus stated it was not repugnant to the Constitution of the United States, the court saying (p. 562):

"No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so."

In *Rhodes* v. *Iowa*, (170 U. S. 412,) the purport of the act was again passed upon. Reiterating the ruling made in the Rahrer case, it was decided that whilst the Wilson Act caused liquors shipped into Iowa from another State to be divested of their character as articles of interstate commerce after their delivery in Iowa to the person to whom consigned, nevertheless the act did not authorize the laws of Iowa to be applied to such merchandise whilst in transit from another State and before delivery in Iowa.

In *Vance* v. *Vandercook Co., No. 1*, (170 U. S. 438,) the operation of a liquor law of South Carolina was considered. By the act in question the State of South Carolina took exclusive charge of the sale of liquor within the State, appointed its agents to sell the same, and empowered them to purchase the liquor, which was to be brought into the State for sale. The fact was

that by the act in question the State of South Carolina, instead of forbidding the traffic in liquor, authorized it, and engaged in the liquor business for its own account, using it as a source of revenue. The act in addition affixed prerequisite conditions to the shipment into South Carolina from other States of liquor to a consumer who had purchased it for his own use and not for sale. Considering the Wilson Act and the previous decisions applying it, it was decided that the South Carolina law, in so far as it took charge in behalf of the State of the sale of liquor within the State and made such sale a source of revenue, was not an interference with interstate commerce. In so far, however, as the State law imposed burdens on the right to ship liquor from another State to a resident of South Carolina intended for his own use and not for sale within the State, the law was held to be repugnant to the Constitution, because the Wilson Act, whilst it delegated to the State plenary power to regulate the sale of liquors in South Carolina shipped into the State from other States, did not recognize the right of a State to prevent an individual from ordering liquors from outside of the State of his residence for his own consumption and not for sale.

Quite recently, at this term, in *American Express Company* v. *Iowa*, and *Adams Express Co.* v. *Iowa*, (196 U. S. 133, 147,) the construction affixed to the Wilson Act in the previous cases was applied, and the power of the State of Iowa to control the sale of liquors shipped from another State into that State, after their delivery to the consignee, was upheld.

Applying the Wilson Act and the decisions thereunder to the statute here assailed, we think it clear that the contention that it is repugnant to the commerce clause of the Constitution is without merit, unless the reasons urged to show that the present case is not within the scope of the Wilson Act be well founded. We proceed to consider the contentions relied on to establish that proposition.

1st. The Wilson Act, it is argued, subjects liquors shipped from one State into another, after their arrival at their destination, only to the "laws of such State or Territory enacted in the exercise of its police powers . . ." As, it is said, the law of Missouri was not enacted in the exercise of the police power, hence malt liquor received from another State and held in Missouri for sale retained its character as an article of interstate commerce until sold in the original package.

But the proposition rests upon the mere assumption that the law of Missouri was not enacted in the exercise of the police power of that State. Certainly the regulation of the sale of liquor is essentially a police power. Surely, also, provision made in a State law tending to determine the purity of malt liquors offered for sale and consumption within a State is likewise an exertion of the same power. Conceding that the law in question may

be inadequate to accomplish the purpose designed and produces a large revenue to the State over and above the cost of inspection, this affords no Federal ground upon which to hold that the police power of the State was not brought into play in making the enactment where the law does not operate upon a subject within Federal control. This becomes evident when it is borne in mind that, whether the statute be regarded as a prohibition, as a regulation, as a license or as an inspection law, if it encroached upon the Federal authority it would be void, and, on the contrary, in all or any of these aspects, the law would be valid, so far as the Federal Constitution is concerned, if it did not so encroach. The purpose of the Wilson Act was to make liquor after its arrival a domestic product and to confer power upon the States to deal with it accordingly. The police power is hence to be measured by the right of a State to control or regulate domestic products, a State and not a Federal question as respects the commerce clause of the Constitution. So far as the State aspect is concerned the matter is foreclosed by a decision of the Supreme Court of Missouri passing upon the validity, under the State constitution, of the law now under consideration. (*State* v. *Bixman*, 162 Mo. 1.) In that case a person was proceeded against for selling malt liquor made within the State of Missouri without complying with the statute. The validity of the statute was assailed, among others, on the ground that it was a revenue law and repugnant to the uniformity clause of the State constitution; that it was not an inspection law because it did not provide for an adequate inspection, and because the burden which it imposed was obviously out of all proportion to the cost of inspection, since the charge which was exacted copiously enriched the State treasury. The State court, after an elaborate review of its previous decisions, held that the mere fact that a revenue was produced by the execution of the statute did not cause the statute to be merely a revenue measure, and that although the inspection which the law provided might be inadequate, nevertheless the statute did not violate the State constitution. These views were sustained upon the ground that the statute dealt with a subject which was peculiarly within the police power of the State. Summing up its conclusions as to the validity of the statute, the court declared:

"In our opinion it [the law] *is a police regulation imposing conditions upon the business of manufacturing and selling beer and malt liquors in this State*, which business the State may absolutely suppress or permit as the legislatures may prescribe. We construe the act, in view of all its parts and in connection with other license laws of this State, and hold that the fee exacted is the price which the State demands for the privilege of doing the business of brewing and selling beer and malt liquor in this State, and it is immaterial by what name it is called."

As then, the Supreme Court of Missouri has determined that the statute does not conflict with the State constitution and is valid because it is a police regulation imposing conditions upon the business of manufacturing and selling beer in Missouri, a traffic which it is conceded the State had the power to prohibit entirely, it follows that we are without power, from a consideration of the State constitution, to treat the law as invalid because of the revenue provisions of the State constitution or other limitations imposed by that constitution upon the State government. It necessarily results from this that the assailed law comes directly within the express terms of the Wilson Act. The determination of this question by the Supreme Court of Missouri, as to liquor manufactured in Missouri, in the absence of discrimination, is necessarily conclusive also as to the character of the law when applied to a similar article shipped from other States into Missouri after arrival at its destination, and when held for sale and consumption in that State. This must be the case, since, as we have seen, the Wilson Act, to use the words of *In re Rahrer*, places liquor coming from another State after its arrival " within the category of domestic articles of a similar nature."

To decide that an exertion by a State of its power to regulate the sale of malt liquors manufactured within the State was an exercise of its police authority, and yet to say that the same, when applied to liquor shipped into the State from other States, after delivery, was not an exertion of the police power, would be to destroy the Wilson Act, and frustrate the very object which it was intended to accomplish, and besides would overrule the previous decisions of this court upholding and enforcing that statute.

We need not, however, further consider the subject, since the proposition relied upon is not open to discussion, as a similar contention was expressly ruled upon in *Vance* v. *Vandercook Co., No. 1, supra.* In that case, as has already been said, the State of South Carolina had by law taken charge of the sale of liquors in the various counties of the State, no liquor being allowed to be sold except through the State agencies. The law by which this system was put in force had been upheld by the State courts as a lawful exertion of the police power. The validity of the act was assailed in the Circuit Court of the United States on the ground of its repugnancy to the commerce clause of the Constitution, and the lower court sustained the contention. Among the grounds relied upon in this court was that the law in question was not within the Wilson Act, because it was not an exertion of the police power of the State, since it did not forbid the sale of liquor, but on the contrary fostered and encouraged it and made it a source of revenue. In holding this proposition to be untenable the court said (p. 447):

" The confusion of thought which is involved in the proposition to which we have just referred is embodied in the principle upon which the court below mainly rested its conclusion. That is, ' if all alcoholic liquors, by

whomsoever held, are declared contraband, they cease to belong to commerce, and are within the jurisdiction of the police power; but so long as their manufacture, purchase or sale, and their use as a beverage in any form, or by any person, are recognized, they belong to commerce and are without the domain of the police power.' But this restricts the police power to the mere right to forbid, and denies any and all authority to regulate or restrict. The manifest purpose of the act of Congress was to subject original packages to the regulations and restraints imposed by the State law. If the purpose of the act had been to allow the State law to govern the sale of the original package only where the sales of all liquor were forbidden, this object could have found ready expression, whilst, on the contrary, the entire context of the act manifests the purpose of Congress to give to the respective States full legislative authority, both for the purpose of prohibition as well as for that of regulation and restriction with reference to the sale in original packages of intoxicating liquors brought in from other States."

2d. Conceding, it is argued, that the Missouri statute attached to the liquor after delivery at its destination in Missouri, nevertheless as the burdens which the statute imposed were of such a character as to affect traffic in the article and hence operated to deter shipments into Missouri, therefore the statute must be treated as if it bore upon the liquor while still in transit as a subject of interstate commerce. This proposition simply amounts to contending that the Wilson Act should be disregarded, since to enforce it would give the States power to regulate interstate traffic in liquor. If when a State has but exerted the power lawfully conferred upon it by the act of Congress its action becomes void as an interference with interstate commerce because of the reflex or indirect influence arising from the exercise of the lawful authority, the result would be that a State might exert its power to control or regulate liquor, yet if it did so its action would amount to a regulation of commerce and be void. And this would be but to say at one and the same time that the power could and could not be exercised. But the proposition would have a much more serious result, since to uphold it would overthrow the distinction between direct and indirect burdens upon interstate commerce by means of which the harmonious workings of our constitutional system has been made possible.

3d. It is further insisted that, as the Missouri law is denominated in its text as an inspection law, and does not provide an adequate inspection, and besides imposes a burden beyond the cost of inspection, the law is repugnant to the Constitution of the United States when tested by previous decisions of this court determining when particular inspection laws amounted to a regulation of commerce, citing *Atlantic & Pacific Telegraph Co.* v. *Philadelphia*, (190 U. S. 160,) and *Postal Telegraph Cable Co.* v. *New Hope*, (192 U. S. 55.) These cases, however, simply considered State laws which operated upon interstate commerce. To apply them to the Missouri law necessarily involves deciding that the malt liquors to

which that law applied had not ceased to be articles of interstate commerce; and, therefore, again, merely disregards the Wilson Act and the decisions of this court concerning it. Indeed, the whole argument upon which the entire case of the plaintiff in error proceeds rests upon this fallacious assumption, since it admits on the one hand the validity of the Wilson law, and yet seeks to take this case out of the reach of its provisions by distinctions which have no foundation in reason, unless it be that that law is to be disregarded or held to be unconstitutional.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 85.—October Term, 1904.

Pabst Brewing Company vs. Giles Y. Crenshaw et al. } Appeal from the Circuit Court of the United States for the Western District of Missouri.

[April 17, 1905.]

Mr. Justice Brown dissenting.

The opinion of the Court is put upon the ground that the Wilson Act subjects liquors shipped from one State into another, after their arrival at their destination, to the laws of the State or Territory enacted in the exercise of its police powers; and that, as an inspection law is a law enacted in the exercise of its police powers, the law in question is within the act; and we are consequently precluded from inquiring whether such law is a legitimate exercise of the police powers or a mere revenue law to which the name of an inspection law is given for the purpose of obviating the difficulty, under the State Constitution, of upholding it as a revenue measure. It may be conceded at once that if the law in question be a legitimate inspection law it necessarily follows that, as it was enacted in the exercise of the police power of the State, it applies to foreign liquors "to the same extent and in the same manner as though such liquors or liquids had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced in original packages or otherwise." The opinion practically concedes that the act must, if constitutional, be supported as an inspection law, passed under the police power of the State; and such was the position taken by the Supreme Court of Missouri. It was admitted in that case, both by the majority and minority judges, that the act could not be supported as a revenue measure, because in conflict with the Constitution of the State.

To determine the question whether it can be supported as an inspection law it is necessary to consider at some length the nature of its provisions.

The agreed statement of facts shows that the plaintiff manufactures in the State of Wisconsin ten different kinds or grades of beer and malt liquors, each kind being separately manufactured and requiring special treatment; that it ships into the State of Missouri annually not less than 15,000 barrels of malt liquors, of thirty-one gallons each, of the aggregate value of $100,000; that there are a large number of domestic manufacturers of malt liquor in the State of Missouri, whose annual productions

amount to over 2,250,000 barrels of beer of the aggregate value of $12,250,000, of which 1,275,000 are sold within the State; that there are other manufacturers outside of the State standing in the same position as the plaintiff, who annually ship into the State not less than 165,000 barrels of the aggregate value of $10,725,000, beside that imported from abroad; that plaintiff is licensed to carry on business in Missouri; that such business consists of shipping into the State, for the purposes of selling therein or reshipping therefrom, the product of its manufacture in Wisconsin; that in the usual course of its business it is compelled to maintain large warehouses in the State, as well as an office, as a necessary adjunct to the conduct of its business; that it maintains no manufactory in Missouri, and that it disposes of its beer in the original packages in which it is shipped.

There are insuperable difficulties in the way of the maintenance of this act as an inspection measure.

To inspect, as defined by Webster, is to examine, to view closely and critically, especially in order to ascertain quality and condition, to detect errors, etc.

The object of the act is declared by section 4 to be to exclude the use of any substance, material or chemical, in the manufacture of malt liquors other than pure hops, or pure extract of hops, or pure barley, malt or wholesome yeast or rice. So far as beer manufactured within the State is concerned, the inspection is made, or at least may be made, (*State* v. *Bixman*, 162 Mo. 1, 34,) of the ingredients of the beer in the mash tub and before the beer is actually brewed. The inspector goes to the brewery and makes his test by taking a sample of the mash of the beer there fermenting, and, although thousands of gallons may be made from one mash, a single inspection is sufficient. With respect to beer manufactured outside of the State, section 5 requires that the consignee of the beer shall notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof or other reputable person having actual knowledge of the composition of said beer or malt liquors, that no material other than pure hops, or the extract of hops, or pure barley, malt or wholesome yeast or rice, was used in the manufacture of the same. "Upon the receipt of said affidavit the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beers and malt liquors in this State."

It is true this section seems to require that upon receipt of such affidavit the inspector shall inspect and label the packages. But similar words used in section 7 with regard to domestic beer were interpreted by the Supreme Court in *State* v. *Bixman*, (162 Mo. 1,) as requiring only an

inspection of the mash at the brewery, since the actual inspection of the beer would require the opening of each package, or at least a sample package, which would practically ruin the contents. As it is impossible to suppose that the Legislature should have contemplated that the inspectors should visit breweries outside of the State and inspect the mash, or that they should open the packages after their receipt in the State, and thus spoil the beer, it would seem that the inspectors have no alternative but to accept the affidavit as a basis of their inspection. This is said to be the manner in which the law is practically administered. Indeed, the agreed facts show that the beer involved in this case was inspected while still in the hands of the plaintiff, that the packages were never opened, but the affidavit was accepted as a sufficient compliance with the act.

While this may be the only inspection practicable, it is really no inspection at all, since it is dependent entirely upon the veracity of the person making the affidavit. There is no power given to these inspectors to investigate the truth of the statements contained in these affidavits, except, possibly, by tasting or analyzing the beer. There is no penalty provided for making a false affidavit, nor can the State proceed against the manufacturer who is beyond the jurisdiction of the court. There is no assurance that the affidavit, which may be made in the State of manufacture as well as in Missouri, has any relation to the particular shipment to which it is sought to apply it, and there is no power given even to open the boxes in which bottled liquors purport to be enclosed, to examine their contents. The object of inspection laws is to require such examination of the thing inspected as will insure to the public a safe and wholesome article. Obviously to secure this the inspection must be made by officers appointed for that purpose; at least it cannot be delegated, as it virtually is in this case, to the manufacturer. The requirement of an affidavit, and the acceptance of this in lieu of an actual inspection, make the affiant, who is the manufacturer or his agent, the sole judge of the fact whether the liquor contains only the ingredients allowed by law. We cannot treat this as a *bona fide* inspection. To justify an inspection in law there must be an inspection in fact.

We had occasion in *Vance* v. *Vandercook Co.*, (170 U. S. 436–456,) to pass upon a law requiring a sample of alcoholic liquor proposed to be shipped, to be sent to the State officer in advance of the shipment, and as a prequisite to making a subsequent shipment. We held that the inspection of a sample so sent in advance was not in the slightest degree an inspection of the goods subsequently sent into the State. "The sample may be one thing and the merchandise which thereafter comes in another." This is a much stronger case for the application of the principle, as there is no inspection at all, but the acceptance of an affidavit made by an interested party in lieu thereof. Indeed, so perfunctory is this inspection that

it appears to have awakened a suspicion in the court below "that the Legislature was more concerned in collecting fees to swell the exchequer of the State, than in the protection of the people who might drink beer."

The obvious inefficacy of the inspection has an important bearing upon the more serious objection to this act, in that the fees for inspection bear no just relation to the expense, and make it evident that the law was not passed in a *bona fide* exercise of the police powers of the State, but as a convenient method of increasing the public revenues. Section 8 provides for an inspection fee of one cent per gallon and two cents for labelling each package containing eight gallons, making a total fee of one and a quarter cents per gallon. All of these fees are required to be paid into the State treasury, and pass to the general revenue fund of the State. The inspectors cannot even deduct their salaries from the fees, but are paid by a distinct appropriation for that purpose.

It is conceded in the stipulation of facts that the entire expenditure authorized on account of actual inspection amounts to $12,500, and that the inspection fees annually collected amount to $350,000, or $337,500 in excess of the costs for inspection, and that the fees chargeable under said act upon the malt liquors manufactured out of and brought into the State from other States and from foreign countries, for sale in Missouri, exceed the total authorized cost for inspection, approximately, $60,000 a year.

In this connection it is pertinent to notice that the bill in question when first introduced in the House was entitled an "An act creating the office of inspector of beer and malt liquors, and providing for the creation of a fund for the construction of roads and highways;" and as originally introduced into the Senate contained the words "providing for the increase of the general revenue fund." In the bill as passed these words were stricken out, and the words "providing for the inspection of beers and malt liquors manufactured and sold in this State" inserted in their place. Notwithstanding these changes in the title of the bill as finally passed, it is evident that the main object was to increase the general fund of the State by the amount of the inspection fees, less the expenses of the inspection, and that the inspection was really an incident to or an excuse for the revenue to be derived from the act. These facts are a cogent argument in favor to applying to this case the rule established in a number of recent cases, that fees cannot be imposed for the purpose of inspection upon companies doing an interstate business which are so far in excess of the expenses of such inspection as to make it plain that they were adopted, not as a means of paying such expenses, but as a means of raising revenue.

The latest of these is that of the *Postal Telegraph Cable Company* v. *Taylor*, (192 U. S. 64,) wherein a license fee was imposed upon the telegraph company which largely exceeded the entire cost to the company of maintaining its line, including repairs, reconstruction, costs of labor and

of material and travelling expenses of employees, and all expenses incurred by it in a careful inspection of its poles and wires. The ordinance was defended as a police regulation. It was argued that the question of revenue was not its object, but that the defendant had the right to constantly inspect the poles and wires to protect the lives of its citizens. The court found the borough to have been sparsely settled; that it had done nothing in the way of inspection, and had incurred no liability therefor; that the fee was twenty times as large as was necessary to make the most careful and efficient inspection that could have been made. The ordinance was adjudged to be invalid, the court saying: "To uphold it in such a case as this is to say that it may be passed for one purpose and used for another; passed as a police inspection measure and used for the purpose of raising revenue; that the enactment as a police measure may be used as a mere subterfuge for the purpose of raising revenue, and yet, because it is said to be an inspection measure, the court must take it as such and hold it valid, although resulting in a rate of taxation which, if carried out throughout the country, would bankrupt the company, were it added to the other taxes properly assessed for revenue, and paid by the company."

In previous cases arising under a similar state of facts the ordinances had been upheld as within the police power of the municipality, (*St. Louis* v. *Telegraph Co.*, 148 U. S. 92; 149 U. S. 465; *Western Union Tel. Co.* v. *New Hope*, 187 U. S. 419,) in which the ordinances were sustained upon the ground that the fees were not so excessive as to justify the inference that they were not imposed as a *bona fide* exercise of the police powers, and in *Atlantic & Pacific Telegraph Co.* v. *Philadelphia*, (190 U. S. 160,) in which the question of reasonableness was held to have been properly submitted to the jury, and *Postal Telegraph Cable Co.* v. *New Hope*, (192 U. S. 55,) in which the verdict of a jury for a less amount than that fixed by the ordinance was held to be a verdict that the charge was unreasonable, and should have been followed by a judgment for the telegraph company.

The facts of this case show that the inspection, as applied to malt liquors manufactured out of the State, was purely perfunctory, and accomplished nothing for the protection of its citizens, but that the fee derivable therefrom was thirty times the actual cost of such inspection, even when applied to liquors manufactured within the State. A disproportion so gross can only be accounted for upon the theory that the act was intended for the purposes of revenue and not for inspection.

It is insisted, however, that as the Supreme Court of the State has in the case of *State* v. *Bixman*, (162 Mo. 1,) by a majority vote, upheld the constitutionality of the act as an inspection law, applied to beer of *domestic* manufacture, and not as an act for raising revenue, we are bound by this definition, and are precluded from considering it in any other light than

that of an inspection fee or license tax. But a question of constitutional law cannot be answered by a definition. While, as we have frequently said, we adopt the interpretation of the statute of a State affixed to it by the court of last resort thereof, we still feel at liberty in accepting such interpretation to determine for ourselves whether the act is a *bona fide* exercise of the police power of the State and not intended merely as an excuse for the taxation of interstate commerce.

As was said by this Court in *Mugler* v. *Kansas*, (123 U. S. 623, 661): "If, therefore, a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

In *Railroad Co.* v. *Husen*, (95 U. S. 465,) the validity of the act of the State of Missouri, which prohibited the introduction into the State of any Texas or Mexican cattle between the months of March and November of each year, was considered. It was insisted that the law was valid as a quarantine or inspection law, as its purpose was to prevent the introduction of cattle afflicted with contagious diseases. But the Court pointed out that no provision was made for the actual inspection of the cattle, so as to secure the rejection of those that were diseased, but that all importation of cattle, whether sound or diseased, was forbidden for long periods; and it was held that the statute was void as a plain intrusion upon the exclusive domain of Congress.

And in *Reid* v. *Colorado*, (187 U. S. 137, 150,) this Court said:

"Certain principles are well settled by the former decisions of this Court. One is that the purpose of a statute, in whatever language it may be framed, must be determined by its natural and reasonable effect. (*Henderson* v. *Mayor of New York*, 92 U. S. 259, 268.) Another is that a State may not, by its police regulations, whatever their object, unnecessarily burden foreign or interstate commerce. (*Railroad Company* v. *Husen*, 95 U. S. 465, 472.) Again, the acknowledged police powers of a State cannot legitimately be exerted so as to defeat or impair a right secured by the National Constitution, any more than to defeat or impair a statute passed by Congress in pursuance of the powers granted to it. (*Gibbons* v. *Ogden*, 9 Wheat. 1, 210; *Missouri, Kansas & Texas Ry. Co.* v. *Haber*, 169 U. S. 613, 625, 626, and authorities cited.)"

The reasonableness of the law as compared with the cost of inspection is made the test of the validity of the law in *Patapsco Guano Co.* v. *Board of Agriculture*, (171 U. S. 345;) *Willis* v. *Oil Co.*, (50 Minn. 290.)

But treating it as an inspection law, the question remains whether, as applied to beer manufactured in other States, it is a *bona fide* exercise of the police powers of the State to protect the health of its citizens, and for the reasons already given we are of opinion it is not. The fact that

the law may have been valid as applied to liquors manufactured within the State does not remove the difficulty, as the Wilson Act only applies to the police powers of the State to the same extent and in the same manner as though the liquors had been produced within the State. If foreign liquors were subjected to the same inspection as domestic liquors there would be much force in the contention that the inspection was covered by the terms of the Wilson Act; but as in this case domestic liquors were actually inspected, and foreign liquors were not inspected at all, the act does not apply. The object of the act is merely to place foreign and domestic liquors on the same footing as respects the police powers of the State. The inference is drawn in the opinion of the Court that upon the arrival of foreign liquors at their destination the State may deal with such liquors as it pleases; in other words, that they have passed wholly beyond the Federal control as subjects of interstate commerce.

The Wilson Act was passed in consequence of our decision in *Leisy* v. *Hardin*, (135 U. S. 100,) to the effect that a State statute prohibiting the sale of liquors was unconstitutional, as applied to a sale by the importer from another State in original packages. That case was put upon the ground that liquors had always been recognized by the commercial world as subjects of exchange, barter and traffic, and that the State could not prohibit their importation from abroad or their sale by the importer. To meet this exigency, and to enlarge the powers of the State with respect to intoxicating liquors, the Wilson Act was passed, declaring that upon thei arrival in the State they should be subject to the police powers of the State to the same extent and in the same manner as though such liquors had been produced within such State. The constitutionality of this act was sustained in *Rahrer's Case*, (140 U. S. 545,) although in the subsequent case of *Rhodes* v. *Iowa*, (170 U. S. 412,) it was held that the Wilson Act did not operate to attach to liquors the prohibitory legislation of the State at the moment they reached the State line, or before the completion of the act of transportation by their arrival at their point of destination and delivery to the consignee.

The primary, if not the sole, object of the Wilson Act was to attach the prohibitory laws of the State as a police measure to liquors the moment they were delivered to the consignee, although they might still be in their original packages. The State was then at liberty to forbid their sale.

The act does not affect the right of *inspection*, since that right was one which existed wholly independent of the act, and had been applied and recognized ever since the case of *City of New York* v. *Miln*, (11 Pet. 102,) as one of the ordinary police powers of the State, which it was liberty to exercise quite irrespective of any Federal statute for the protection of the health of its citizens. The Wilson Act neither creates, adds to, takes from or affects the police powers of the State with respect to inspection in any par-

ticular. The power of the State to enact inspection laws, provided that such laws are intended in good faith for the protection of the people, and not as a covert means for raising revenue by exorbitant charges, remains precisely as it was before the act was passed. In the Miln case an act of the State of New York, requiring the masters of vessels arriving from foreign ports to report to the city authorities the names, &c., of his passengers, was upheld as a proper exercise of the police power; though subsequently, in the *Passenger Cases*, (7 How. 283,) a similar law, requiring the masters of vessels to pay a certain sum on account of every passenger brought from a foreign country into the State, was held to be inoperative, although passed under the general denomination of a health law. It was said that, although the amount of the tax was small, it might have been increased so as to become prohibitory at the discretion of the legislature; and the fact that the tax was applied to the maintenance of a marine hospital, and to the reformation of juvenile delinquents, showed that it could not be sustained as an exercise of the police power.

While we may concede that the liquors in this case had arrived at their destination, it does not follow that they were subject to any law which the State chose to pass in an assumed exercise of the police power. The State has an undoubted right to inspect all goods arriving therein, but it does not follow that it has the right to subject them to an inspection which is no inspection at all, and charge them with a fee out of all proportion to the costs of even a proper inspection, and call it an exercise of the police power. Though these liquors had arrived at their destination, the State provided, by section 5 of the act, that they should be inspected before offering them for sale and before they had been commingled with the general mass of property. The fact that they had been delivered to the consignee was of no materiality, since the act which the State required should be done was one which applied a condition precedent to their admission to the State for commercial purposes. Until this act was performed, they were protected against an unlawful interference. This inspection might have taken place at the State line, but for the convenience of the State officers, as well as that of the brewers, it was postponed until the arrival at their destination, as is frequently the case in foreign countries, where imported goods are not examined at the frontier, but at Paris or London, upon their arrival there; but they are not legally entered until such examination takes place. To say that their character as interstate commerce existed at the State line, but had been lost upon their arrival at their place of destination before they had shown themselves entitled to enter the State, is to apply a test wholly irrelevant under the circumstances. Indeed, in the case of *Rhodes* v. *Iowa*, (170 U. S. 412,) we held expressly that the prohibitory liquor laws did not apply to liquors while in transit from their point of shipment to their delivery to the consignee. The vital question

is whether the inspection was applied at a time prior to their legal importation into the State as a commercial article. If it were, and the inspection were a lawful one, it is a proper regulation of interstate commerce; but if the inspection were not a *bona fide* exercise of the police power it was an unlawful interference with such commerce. Whether the inspection was made at the State line or at the destination of the goods is absolutely immaterial.

The case of *Vance* v. *Vandercook Company*, (170 U. S. 438,) so strongly relied upon in the opinion of the court, seems to me to have little or no bearing on this feature of the case, and tends rather to support the theory that the Wilson Act had nothing to do with the question of inspection. The case turned upon the power of the consignee of liquors to receive them for his own use within the State of South Carolina, as well as the power to sell them in the original unbroken packages as imported, to citizens of South Carolina. It was held in substance that the consignee had the constitutional right to receive them for his own use without regard to the State laws, but that under the Wilson Act he could no longer assert a right to *sell* them in original packages in defiance of the State laws. It was said that although the State law permitted the sale of liquors subject to particular restrictions and upon certain enumerated conditions, it did not follow that the law was not a manifestation of the police powers of the State. The case, as do all others in which the Wilson Act has been construed, relates to the power to *sell*, and not to the power to inspect. I have no criticism to make upon the extract from that opinion, particularly when taken in connection with the following extract from *Scott* v. *Donald*, (165 U. S. 58,) also cited with apparent approval in the Vandercook case: "The question whether a given State law is a lawful exercise of the police power is still open, and must remain open, to this court. Such a law may forbid entirely the manufacture and sale of intoxicating liquors and be valid. Or, it may provide *equal* regulations for the inspection and sale of all domestic and imported liquors and be valid. But the State cannot, under the Congressional legislation referred to, establish a system which, in effect, discriminates between interstate and domestic commerce, in commodities to make and use which are admitted to be lawful."

But we are not without authority upon this point. In *Minnesota* v. *Barber*, (136 U. S. 313,) a law of Minnesota, as in this case, prohibited the sale of fresh meats except after an inspection, and was sought to be sustained as a law for the protection of the health of the inhabitants. The act required the inspection to take place within twenty-four hours before the animals were slaughtered, and was held to be void as a law intended to be applied only to cattle slaughtered outside the State. While the question was not discussed, it was assumed that the meats had arrived at their destination within the State and delivered to their consignee, and that the inspection,

not being a *bona fide* one, was an unlawful discrimination against interstate commerce. So in the subsequent case of *Brimmer* v. *Rebman*, (138 U. S. 28,) a law of Virginia provided that meat should not be sold from animals slaughtered a hundred miles or more from the place where offered for sale, unless previously inspected by local inspectors. The act was held to be void as in restraint of commerce between the States, and as imposing a tax upon the products of other States. Both of these acts, as does the act of Missouri in question, provided against the sale of uninspected merchandise, and this Court held, quite irrespective of other considerations, that the act was void. To the same effect is *Walling* v. *Michigan*, (118 U. S. 446.)

For the reasons already given, I think the act in this case is void as an inspection law, and an illegal interference with interstate commerce, since the assumed inspection preceded the arrival of the liquors within the State as a constituent part of its general property.

The consequences of this decision seem to me extremely serious. If the States may, in the assumed exercise of police powers, enact inspection laws, which are not such in fact, and thereby indirectly impose a revenue tax on liquors, it is difficult to see any limit to this power of taxation, or why it may not be applied to any other articles brought within the State, and the cases of *Minnesota* v. *Barber*, (136 U. S. 313,) and *Brimmer* v. *Rebman*, (138 U. S. 78,) be practically overruled. The Wilson Act does not give the Legislature any greater authority with respect to the inspection of liquors than with respect to other imported articles, and, as already observed, it leaves the question of inspection exactly where it found it. If the Wilson Act receive its natural application, that is, of meeting the exigency created by our decision in *Leisy* v. *Hardin*, and enabling the States to enforce their prohibitory liquor laws upon the arrival of the liquor within the State, as we have repeatedly held, the law has a definite and distinct value and is readily understood.

I am authorized to state that the CHIEF JUSTICE, Mr. Justice BREWER and Mr. Justice DAY concur in this dissent.

True copy.

Test:

Clerk Supreme Court, U. S.